Supreme Court, U. S.
FILED
JUN 18 1980
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1979

No. 79-1992

WAYNE C. LA VELLE, Petitioner

v

Workmen's Compensation Appeals Board State of California
TRANS WORLD AIRLINES
LIBERTY MUTUAL INSURANCE CO.
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS LOCAL 1111
DISTRICT 142 OF THE INT'L
ASSOCIATION OF MACHINIST
HARTFORD ACCIDENT & INDEMNITY CO
Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

WAYNE C. LA VELLE
45 Reed Bl. #2
Mill Valley, CA
94941

PRO SE

June 18, 1980

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IN THE
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TRANS WORLD AIRLINES;
LIBERTY MUTUAL INSURANCE CO.
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS
LOCAL 1111; DISRICT 142 OF THE
INT'L ASSOCIATION OF MACHINISTS;
HARTFORD ACCIDENT & INDEMNITY CO.
Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

The petitioner Wayne C. LaVelle respectfully prays that a Writ of Certiorari to review the Judgement and Opinion of the Court of Appeal

of the State of California, in and for the First Appellate District, Division One, enter this proceeding on June 18, 1980. The multi-Defendants have been listed as pursuant to Rule 23 (5)and/or Rule 15 (3) therein.

OPINION BELOW

No opinion of the Court of Appeal was issued, but the denial for Writ of Review appears in the Appendix hereto. No opinion was issued by the California Supreme Court when petition for hearing was denied. A copy of the Supreme Court's order denying hearing also appears in the Appendix hereto.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This appeal involves Section 1 of the Fourteenth Amendment, U.S. Constitution and U.S.C. §1257 (3); Californis Constitution, Article 1, Section 13; California Labor Code §5408. These provisions are reprinted in Appendix (A).

JURSIDICTION

The judgement of the Court of Appeals of California, First Appellate District, Division One, on Case N. 1 CIVIL NO. 47704, was entered February 22, 1980, denying hearing and thus affirming the State of California Worker's Compensation Appeals Board Award, dated May 25, 1979. The Court of Appeal denied a timely petition for Writ of Review. Thereafter, on March 3, 1980, the Supreme Court of Californis denied a petition for hearing on March 20, 1980.

This is one of a series of cases which commenced with the filing of an application on November 10, 1971, in connection with an incident occurring on August 4, 1970, to the applicant's right knee while applicant was employed as a rampserviceman by Trans World Airlines.

Subsequent thereto as this litigation progressed, the applicant had other incidents and filed during the course of this litigation 12 applications, i.e., eleven additional ones. In addition to the present case at bar, 1 CIVIL NO. 47704, or WCAB NO. 74 LA 391 394, concerning an injury to the hand, the following are requested to be consolidated into one case

because all the cases were tried at one time:

CASE NO.	DATE OF INJURY	PART OF BODY
71 LA 371 256	Aug. 4, 1970	right knee
71 LA 370 927	Jan, 22, 1971	right knee
73 LA 380 934	Oct. 3, 1972	right knee
73 LA 380 935	Dec. 13, 1972	right knee
73 LA 380 936	Feb. 12, 1973	right knee
74 LA 387 156	Jan. 26, 1974	emotional, specific
74 LA 392 377	Aug. 4, 1970 Oct. 25, 1974	emotional, cumulative trauma
74 LA 392 422	Mar. 13, 1974	hands--chemical dermatitis
74 LA 391 394 (present case)	May 4, 1974	hand--crushing injury
75 LA 394 945	Dec. 31, 1974	back
76 LA 403 651	Feb. 18, 1976	lungs
76 ING 38 740	July 13, 1976	internal& psychological trauma

The jurisdiction of this Court is invoked pursuant to U.S.C. §§1257 (3).

QUESTIONS PRESENTED

I.Does the denial by a state Administrative Law Court to a request by an indigent claimant for the appointment of counsel to assist him at trial for compensation for serious physical and mental injuries constitute a deprivation of the claimant's rights in violation of the Fourteenth Amendment?

II. In the present case, did the refusal of the state Administrative Law Court to appoint counsel to assist Petitioner at trial, having expressly requested such assistance, deprive petitioner, an indigent person, of his rights in violation of the Fourteenth Amendment?

III. Have the elements of fairplay been denied by the State of California Worker's Compensation Appeals Board, in it's failure to use due diligence with respect to California Labor Code 5408 when the petitioner, an incompetant at the time, appeared before the court without representation, inconsistent with the Fourteenth Amendment?

STATEMENT OF THE CASE

CONSOLIDATION OF CASES as per Rule 23 (5) and 15 (3). Where several cases are sought to be reviewed on certiorari to the same court that involve identical or related questions, it shall suffice to file a single petition for Writ of Certiorari covering all the cases.

HOW THE FEDERAL QUESTION WAS PRESENTED

The Federal question sought to be reviewed was raised by a pleading in the petition for Writ of Review on page six to the Court of Appeal of the State of California, First Appellate District, Division One. Again, in the Supreme Court of the State of California, in the applicant's Petition for Hearing on page five, the same pleading regarding the federal question was used as follows:

> Unless the Findings and Award action taken by the Board is annulled, petitioner will be deprived of his property without due process of law in violation of Section 13, Article 1, of Section 1, of the Fourteenth Amendment of the Constitution of the United States, and petitioner claims benefit and protection.

Because the applicant did not know how to correctly introduce medical evi-

dence, certain documents were not considered by the court. This violated the fairplay rule because the medical reports upheld the applicant's contention of permanent disability.

APPLICANT'S REQUEST FOR COUNCIL

On the first day of trial, December 14, 1976, Judge Fluharty gave permission to applicant's attorney, Joseph Miller of James George Law firm, permission to withdraw from the preceedings. I objected to the action of the court in taking away my legal representation. The Judge asked the applicant if he needed time to obtain an attorney, while also stating that if the trial did not proceed, the Judge would consider a motion by the defense to dismiss the entire trial. Because I did not want to lose all my rights, I chose for the trial to continue. However, I did not wave my rights to an attorney.

Whenever the applicant was called to testify, the defense would concentrate their questions on subjects that were emotionally upsetting to the applicant, causing him to fixate on traumatic emotional events and his psychological

obsessions. The petitioner, who was under constant medical and psychiatric therapy, could not properly represent himself while these types of question were asked.

On December 13 or 14, as the petitioner was testifying to his contemplation of suicide because of the trauma from working with TWA and the IAM, he became totally incapacitated as he broke down and cried uncontrollably while on the stand. He had to be helped down from the stand by his brother.

On May 31, 1977, the Judge became angry with the applicant because the applicant did not serve the IAM in the proper way, and asked applicant why he didn't get an attorney. Applicant said that he had tried, but that no attorney wanted to take his cases. The applicant again requested that the court appoint him an attorney. Request was denied.

On December 5, 1977, the Judge stated that if the applicant would get an attorney, the case would not be such a mess. Applicant again stated that he had tried, but that no attorney wanted to take another lawyer's work. Applicant told

the court that he was a sick man, suffering from both physical and mental injuries, and requested that the court appoint him an attorney. Request was denied.

Throughout the trial when the petitioner was in a confused, obsessed mental state, many stipulations were made that the applicant did not understand.

At one time, the Judge yelled at the applicant, asking what was wrong with him (the petitioner)--couldn't he see that they were trying to help him?

The back case was appealed to the Court of Appeal, State of California, First Appellate District, Division Four, on March 10, 1980.

1 CIVIL NO. 49089 was assigned as the civil number opposed to the Worker's Compensation No. 75 LA 394 945. In this petition for Writ of Review, the cases below, by motion, were asked to be consolidated. The applicant's incapacity because of the psychological problems throughout trial were raised. The Federal questions dealing with the Fourteenth Amendment, Section 1, were raised at the same as supra.

It is noted that the Worker's Compensation Appeals Board does not produce an exact record of the proceedings. The Judge creates a summary of evidence. This does not reflect the total essence of the cases. Because of the controversal matter in this case, the entire transcript must be obtained to insure justice.

REASONS FOR GRANTING THE WRIT

I. The decisions below conflict with the decision of GIDEON V WAINWRIGHT (372 U.S. 335). As in GIDEON V WAINWRIGHT (even though it is a criminal case), there is denial of due process and equal protection consequent upon the refusal to appoint counsel in state Worker's Compensation Court; although, here we can urge that the circumstances presented by the case are special rather than typical. The Petitioner is mentally incompetent and inexperienced. The issues and facts of law were enormous because of the twelve cases being tried at once. The conduct of the trial left much to be desired; however, this is an inevitable consequence of the absence of counsel for the petitioner.

II. Gideon v Wainwright should be extended to matters of civil administrative law courts, expecially concerning property and personal rights and liberty. The Fourteenth Amendment requires counsel for serious criminal offense, but the state takes away the right to a jury trial by statue. A person can be indigent

because he can no longer work by reason of an industrial injury. Industrial injury cases are not handled by all attorneys. And as in the present cases, lawyers refused to take on cases they didn't feel were worth the trouble.

III. The basic concept of worker's compensation did not have attorneys in mind, but that of the worker and the employer coming together. Now, the Worker's Compensation Courts are filled with experienced attorneys representing the employer, but few attorneys to represent the worker.

IV. A person cannot effectively represent himself. The assistance of counsel is necessary to due process and to a fair trial. Without council, the applicant cannot possibly evaluate the lawfullness of his claim, the validity of motions or information presented by the defense counsel.

V. To proceed in Worker's Compensation cases with the poor having no counsel while we guarantee a right to counsel to those who can afford it is also a denial of equal protection under the law.

VI. Witnesses at administrative proceedings are frequently accorded a statutory right to assistance of counsel; 6 (a) of the Administrative Procedure Act (5-U.S.C. §1005 (a) right to counsel). It was also held below in U.S. v Smith (1949), D.C. Conn.) 87 F. Supp. 293- 6(a). It was specifically held that 6 (a) grants the right to representation by counsel, not only to persons who appear before administrative agencies in the sense of responding to process as a party to an action, but also to witnesses summoned to appear before a federal agency. The petitioner could claim he was a witness as a party to the action. At any rate, there was no legal representation given by the Worker's Compensation Appeals Board.

VII. In Bowles v Baer (1944, C.A. 7th ILL) 142, F. 2d. 787, the court said, "It is not at all clear from the court's opinion whether in speaking of rights to which parties at hearing are "entitled", the court had reference to basic constitutionally rights, or merely to rights normally accorded parties by administrative agencies."

VIII. To contrast the above with procedural due process: Constitutionally, petitioner is entitled--that is, if the right to be affected by the administrative ajudication is a constitutionally protected right--and the administrative proceeding must meet the test of fairness, and the denial of counsel may, under particular circumstance, indicate a lack of such fairness. Thus, in Ex parte Chin LOY YOU(1915, D.C. MASS.) 223 F. 833, the court acknowledged that the right to counsel secured by the Sixth Amendment relates only to criminal prosecutions, but said that it is equally true that provision was inserted in the constitution because the assistance of counsel was recognized as essential to any fair trial of a case against a prisoner. It was said that to make a defendant's substantial rights in a matter involving personal liberties the proceedings be called criminal or civil was unsound.

To this last point the petitioner argues as the key issue of contention. It is unsound in this modern day to distinguish one's right to have an attorney

when personal liberty and property rights are involved only when a criminal trial is at hand. It is an unsound fact of law. Poor people have a right to an attorney Whether it is a criminal or civil case should not be the guild line.

The necessity for council in any trial is plain. No individual who is not trained can possibly know or pursue the technical, elaborate, and sophisticated measure necessary to assemble and appraise facts, analyze law, determine contentions, marshal and present all factual and legal considerations. The adage, "He that is his own lawyer has a fool for a client" from the Oxford Dictionary of English Proverbs 112 (2d ed. 1948) has a psychiatric basis. Expecting an accused person, especially indigent, to rise to the level of operating skill and efficiency necessary to defend himself is impossible. Most dependants, after arrest and imprisonment, cannot even function at their normal level of competence.

COMPETENCE

The question of legal compentence has been raised in the manner that the Worker's Compensation Judge applied the

state statute to the merits of this case. From the start of the proceeding the issue of mental injury caused from employment was raised. Even with this knowledge and medical evidence at hand confirming the petitioner's fragil emotional condition, the Judge allowed the applicant's attorney to be released. The petitioner in no way intended to be alone in the court room without assistance of legal counsel.

SPECIAL CIRCUMSTANCES

The Appeals Board may determine the fact of incompetency, in fact has a duty to the other members of the applicant's family to make this determination with due diligence. This simply was not done, and because of the Boards failure to act the petitioner's rights under the Fourteenth Amendment were denied.

The official transcript of Dec 13 &14, 1976, WCAB hearing will show the unstable condition of the applicant after the Judge released the applicant's counsel. The petitioner's mental state of Manic-Depressive Syndrome had episodes of Psychosis.

The fact is that it took the trial Judge six years to reach a decision that

the petitioner had psychiatric disability. The intent of the Labor Code Section 5408 has been invalidated instead of protecting rights of the worker.

The policy used in this case is inconsistant with the Fourteeth Amendment

(Special Circumstances continued on next page)

Was the Judge to ask the applicant if he was competent? How would the claimant know if he was incompetent? Should the doctor of petitioner send medical reports telling of psychiatric problems? This last procedure was followed. The Judge's response was inadequate. The ruling on the psychological cases proved that there was a permanent disability. Why then did the Judge not allow the applicant to have the assistance of requested counsel?

In view that the petitioner was in a "special circumstance", being incapacitated by the definition of the California Civil Law, and being under constant psychological medical treatment, constitues a denial of fundamental fairness.

THE JUDGE CANNOT ACT
AS COUNSEL FOR THE APPLICANT

The trial judge must assure himself by a thorough investigation that the applicant has not ignorantly or incompetently wavied his right to counsel. (The applicant did not wave his right to counsel.) One man cannot act as trial judge and counsel for the applicant. As Justice Sutherland stated, in speaking for the court in POWELL v ALABAMA, 287 U.S. 45,

61, (1932):

> How can a judge, whose functions are purely judical, effectively discharge the obligations of counsel for the accused? He can and should see to it that in the proceedings before the court that the accused shall be dealt with justly and fairly. He cannot investigate the facts, advise and direct the defense or participate in those necessary conferences between councel and accused which sometimes partake of the inviolable character of the confessional.

It is submitted that the Judge did act as liaison between the multi-defense counsels and the lone applicant. This was only as a result of many outrageous outbreakes and objectional conduct by the applicant.

DENIAL OF COUNSEL TO THE INDIGENT VIOLATES BOTH DUE PROCESS AND EQUAL PROTECTION

The refusal to appoint an attorney to represent a destitute person results in discrimination against persons solely upon poverty. There is no doubt that an applicant in the Worker's Compensation Court has an unqualified right under the Fourteenth Amendment to be heard through

counsel he has retained. The problem being here is that there were already two previous attorneys involved, and the third was released by the Judge. Many of the attorneys that applicant had interviews with wanted large sums of money because there were so many cases (12) being tried at one time. The lien form, submitted by the former attorney, reflects the amount of money many attorneys wanted, $4000. As the petitioner would walk into a prospective lawyer's office, the lawyer would take one look at the twelve cases, and refuse to handle them. I submit that if a person with funds is entitled to be heard through an attorney, the same privilege must be extended to indigents. In the case of those able financially to hire counsel, the rule is not limited to special circumstances. It is absolute and complete, and a state may not restrict it. How then can the right be restricted in the case of the poor?

In many compensation cases today, the employer has a well-paid attorney through the company's insurance company. These are the rich and super rich against lay people. In the present case, one lay

man, an incompetent, was thrown against Corporate Giants and a Multi-National insurance company and an International Union. Thus, the indigent applicant cannot be denied an unqualified right solely because of poverty. To do so results in a denial of equal protection. "The need of counsel is the same, whatever the economic status of the accused." McNEAL v SULVER, 365 U.A. 109, 118 (1961) (Douglas, J., concurring).

Petitioner has been denied the right to assistance of counsel in violation of the Fourteenth Amendment of the Constitution of the United States.

The following shows the difficulty that Trans World Airlines and Hardford Accident & Indemnity Company's attorneys had with aspects of the trial. The trial consisted of a total of twelve cases being tried at once before a sound judge, reasonable attorneys for the defense and an incompetent petitioner. In the defendent's Petition for Reconsideration, Worker's Compensation Appeals Board of California, page 6:

> However, the Board will note that the record in this case

> is massive, confusing, contradictory, and although the trial judge made a determined and good faith effort to permit all issues raised and evidence offered thereon, the fact of the matter remains that at no time was your petitioner (defendant) apprised of the fact that it was involved in a further Application and that evidence was actively being presented thereon with respect to issues of which it was not aware and based upon jurisdictional facts that it had no opportunity to either accept or rebut.

The defendant won a retrial on this specific Worker's Compensation Case, No. 76 ING 38 740.

It is clear that appointment of counsel for this petitioner under these special circumstances is a fundamental right, essential to a fair trial.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the Judgment and Opinion of the Court of Appeal of the State of California, First Appellate District, Division one.

Respectfully submitted,

Wayne C LaVelle

WAYNE C. LA VELLE
45 Reed Bl. #2
Mill Valley, CA 94941
PRO SE

June 18, 1980

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE
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OCTOBER TERM 1979

No. 79-1992

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V
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AND AEROSPACE WORKERS LOCAL 1111
DISTRICT 142 OF THE INT'L
ASSOCIATION OF MACHINIST
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Respondents

APPENDIX TO
PETITION FOR WRIT OF CERTIORARE
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

WAYNE C. LAVELLE
45 Reed Bl. #2
Mill Valley CA
94941
PRO SE

June 18, 1980

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CONSTITUTIONAL PROVISION AND STATUES INVOLVED

FOURTEENTH AMENDMENT, SECTION 1 of the CONSTITUTION OF THE UNITED STATES

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S.C. §1257 (3) STATE COURTS; APPEAL; CERTIORARI

Final judgements or decrees rendered by the highest court of a State in which a decision could be had, may be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in ques-

tion the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exdrcised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

CALIFORNIA CONSTITUTION, ARTICLE 1 SECTION 13

Sec. 13. In criminal prosecutions, in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for

the same offense; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; but in any criminal case, whether the defendant testifies or not, his failure to explain or to deny by his testimony any evidence or facts in the case against him may be commented upon by the court and by counsel, and may be considered by the court or the jury. The Legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide when there is reason to believe that the witness, from inability or other cause, will not attend at the trial (Amended Nov. 6 1934)

CALIFORNIA LABOR CODE §§ 5408. MINORS AND INCOMPETENTS

If an injured employee or, in the case of his death, any of his dependents, is under 21 years of age or incompetent at any time when any right or privilege accrues to such employee or dependent under this dicision, a general guardian, appointed by the court, or a guardian

ad litem or trustee appointed by the appeals board may, on behalf of the employee or dependent, claim and exercise any right or privilege with the same force and effect as if no disability existed.

No limitation of time provided by this division shall run against any person under 21 years of age or any incompetent unless and until a guardian or trustee is appointed. The appeals board may determine the fact of the minority or incompetency of any injured employee and my appoint a trustee to recieve and disburse compensation paymentsfor the benecit of such minor or incompetent and his family.

(stats. 1937, c. 90, p. 296, §5408. Amended by State 1965, c. 1513, p. 3590, §138, operative Jan. 15, 1966)

CALIFORNIA SUPREME COURT
ORDER DENYING HEARING

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

MAR 20 1980

I have this day filed Order

HEARING DENIED

In re: 1 Civ. No. 47704
Lavelle

vs.

W.C.A.B. et al.

Respectfully,

G. E. BISHEL
Clerk

68983-877 11-78 4M OBP

COURT OF APPEAL OF THE STATE
OF CALIFORNIA
in and for
FIRST APPELLATE DISTRICT
DIVISION ONE

WAYNE C. LA VELLE Petitioner v WORKERS COMPENSATION APPEALS BOARD, ET AL. Respondents	1 Civ. No. 47704 ORDER DENYING WRIT OF REVIEW

BY THE COURT:

The petition for writ of review is denied.

RACANELLI, P.J.

Dated FEB 22 1980

WORKERS COMPENSATION APPEALS BOARD
State of California

WAYNE LA VELLE SS#363 46 2338 Applicant v TRANS WORLD AIRLINES LIBERTY MUTUAL INSURANCE COMPANY Defendant	Case no. 74 LA 391 394 FINDINGS AND AWARD

Wayne C. La Velle, Applicant
(in propria persona)

Kendig, Stockwell & Gleason
by Steven Harris
Attorneys for Liberty Mutual
Insurance Company

****

Application having been filed herein, all parties having appeared, and the matter having been regularly submitted, the Honorable JESSE E FLUHARTY, Workers' Compensation Judge, now finds , orders, and awards as follows:

FINDINGS OF FACT

1. Applicant, Wayne C. LaVelle, born January 15, 1946, was employed as a ramp serviceman, air transport industry, at Los Angeles, California, on May 4, 1974, by Trans World Airlines, whose insurance carrier on said date was Liberty Mutual

Insurance Company, when he sustained an injury arising out of and occurring in the course of his employment to his left hand and arm.

2. Applicant's earnings were maximum for both temporary and permanent disability ($119.00-$70.00).

3. This injury caused further temporary disability beginning July 24, 1974, to and including July 26, 1974, for which indemnity is payable in the total sum of $51.00.

4. This injury caused no permanent disability.

AWARD

AWARD IS MADE in favor of WAYNE C. LA VELLE against LIBERTY MUTUAL INSURANCE COMPANY of temporary disability indemnity in the saum of $51.00 payable forthwith.

JESSE E FLUHARTY

EXECUTED: MAY 25 1979

Dated and Filed at Los Angeles, CA
Served by mail on person as shown on offical address record MAY 25 1979

Case No. 74 LA 391 394

WAYNE LA VELLE V TRANS WORLD AIRLINES
LIBERTY MUTUAL
INSURANCE COMPANY

Date of Injury:
May 4, 1974

Workers' Compensation Judge: JESSE E
FLUHARTY

Dated: July 3, 1979

REPORT OF WORKERS'S COMPENSATION JUDGE
ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

Applicant, Wayne C. LaVelle, by occupation a ramp serviceman in the air transportation industry, age 28 on date of injury May 24, 1974, sustained an injury arising out of and occurring in the course of his employment to his left hand and arm when it was caught in the door of a car.

Decision complained of is one of a series of decisions which are being made in connection with a complex series of litigation initiated by this litigious person, in pro per.

Between August 21, 1970 and December 31, 1974, twelve cases have been filed. The court is in the process of deciding

each case individually which is becoming a long and laborious porcess indeed.

In connection with this particular case, the court stated in its Opinion on Decision that there is no permanent disibility because there is no medical evidence to show permanent disability.

The applicant now complains stating that there is medical evidence. However, the medical evidence which he has place in file is in connection with an incident ocurred in 1967, seven years prior thereto.

II

DISCUSSION

Petitioner is Applicant, in pro per. Decision issued on May 25, 1979. Petition for Reconsideration was filed on June 19, 1979, and because of the five day requirment for mailing is timely.

Petition has been filed by the applicant, served on opposing counsel, had been verified and consequently is legally effective. However, petition obviously is defective in that applicant refers to medical reports which are not germane either.

The court feels that the evidence supports the findings.

III

RECOMMENDATION

Petition For Reconsideration lack merit and it is respectfully recommended that petition be denied.

JESSE E FLUHARTY
WORKERS COMPENSATION
JUDGE

Served by mail on: JUL 3 1979

Wayne C. LaVelle, 200 38th St. Apt B
Manhattan Beach, CA

16 Circle Dr #3
Tiburon, CA 94920

Kendig, Stockwell, and Gleason
8671 Wilshire Bl
Beverly Hills CA

WORKERS COMPENSATION APPEALS BOARD
State of California

WAYNE LA VELLE Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY	CASE NO. 74 LA 391 394 ORDER DENYING RECONSIDERATION

We have considered the Allegations of the Petition for Reconsideration and the contents of the report of the worker's compensation judge with respect thereto. Based on our review of the record, and for the reasons stated in said report which we adopt and incorporate,

IT IS ORDERED that said Petition for Reconsideration be, and it hereby is DENIED.

WORKERS COMPENSATION
APPEALS BOARD

I CONCUR,

Dated and filed at San Francisco CA
JUL 17 1979

Service by mail on said date to all partie, shown on the official adress record

WORKERS' COMPENSATION APPEALS BOARD
State of California

WAYNE C. LA VELLE SS# 363 46 2338 Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY Defendants	Case No. 71 LA 371 256 FINDINGS AND AWARD

Wayne C. LaVelle, Applicant
(in propia persona)
Kendig, Stockwell & Gleason
by Steven Harris
Attorneys for Liberty Mutual
Insurance Company

****

Application having been filed herein, all parties having appeared, and the matter having been regularly submitted the Honorable JESSE E FLUHARTY, Workers' Compensation Judge, now find, awards, and orders as follows:

FINDING OF FACT

1. Applicant, Wayne C. LaVelle, born February 15, 1946, was employed as a ramp serviceman, air transportation industry, at Los Angles, California, on August 4, 1970, by Trans World Airlines, whose carrier on said date was Liberty

Mutual Insurance Company, when he sustained an injury arising out of and occurring in the course of his employment to his right knee.

2. Applicant's earnings were maximum for both temporary and permanent disability.

3. Applicant has been fully compensated for temporary disability for broken periods through August 1, 1973.

4. Applicant became permanent and stationary August 31, 1972.

5. Employment Development Department paid unemployment eompensation disability benefits for period beginning April 21, 1973 to July 29, 1973, at $105.00 per week concurrently with the period in which temporary disability payments were paid by defendants, however, there are no funds upon which to impress a lien.

6. This injury caused permanent disability of 8-1/4 per cent after apportionment, amounting to 33 weeks of disability payments at the rate of $52.50 a week in the total sum of $1,732.50 payable forthwith.

7. Medical treatment is required to cure or relieve from the effects of this

injury after notice of need made upon defendant.

8. Transamerica Credit Corporation advanced living expenses to the applicant subsequent to the injury of the reasonable value of $246.54.

9. Andre LaVelle advance living expenses to the applicant subsequent to the injury of the reasonable value of $660.00.

10. Applicant is entitled to self procured medical treatment expenses incurred payable as follows: $1,333.000 to Dr. R. Hunt, $50.00 to McGraw Medical Corporation, $431.00 to Glendale Memorial Hospital, $71.50 to Dr. R. Call, $967.80 to South Bay Hospital and $200.00 to Applicant.

11. Applicant reasonably incurred expense for medical reports to prove a contested case of the reasonable value of $150.00 payable to Dr. L Yamshon, $135.00 payable to Dr. R. Roback, and $200.00 payable to Mental Health Institute.

12. The reasonable value of the services of applicant's former attorney, Ermett C. Mathews, is $250.00.

13. Defendants did not unreasonably delay payment of benefits.

AWARD

AWARD IS MADE in favor of WAYNE C. LA VELLE against LIBERTY MUTUAL INSURANCE COMPANY of permanent disability indemnity in accordance with Finding 6 hereinabove; together with medical treatment in accordance with Finding 7 hereinabove; together with expenses for self procured medical treatment in accordance with Finding 10 hereinabove; together with medical legal costs in accordance with Finding 11 hereinabove; less $250.00 to Ermet C. Mathews in satisfaction of lien for attorney's fee herein allowed.

IT IS ORDERED that the lien claim of Employment Development be and it is hereby disallowed.

JESSE E FLUHARTY
WORKERS COMPENSATION
JUDGE

EXECUTED:
APR 25 1979
Served on said date by mail on persons shown on official address record
by: _____

WORKERS COMPENSATION APPEALS BOARD
State of California

WAYNE C. LA VELLE SS# 363 46 2338 Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY Defendant	Case No. 71 LA 370 927 FINDINGS AND AWARDS

Wayne C. LaVelle, Applicant
(in propria persona)
Kendig, Stockwell & Gleason
by Steven I. Harris
Attorneys for Liberty Mutual
Insurance Co.

****

Application having been filed herein, all parties having appeared, and the matter having been regularly submitted, the Honorable JESSE E FLUHARTY, Workers' Compensation Judge, now finds, awards and orders, as follows:

FINDINGS OF FACT

1. Applicant, Wayne C. LaVelle, born January 15, 1946, was employed as a ramp serviceman, air transportation industry, at Los Angeles, CA, on January 22, 1971, by Trans World Airlines, whose insurance carrier on said date was Liberty Mutual Insurance Company, when he sus-

tained an injury arising out of and occurring in the course of his employment to his right knee.

2. Applicant's earnings were maximum for both temporary and permanent disability.

3. Applicant has been fully compensated for temporary disability for broken periods through August 1, 1973.

4. Applicant became permanent and stationary August 30, 1972.

5. Employment Development Department paid unemployment compensation disability benefits for period beginning April 21, 1973 to July 29, 1973, at $105.00 per week concurrently with the period in which temporary disability payments were paid by defendant, however, there are no funds upon which to impress a lien.

6. This injury caused permanent disability of 1-3/4 per cent after apportionment, equivalent to 7 weeks of disability payments at the rate of $52.50 a week in the total sum of $357.50 payable forthwith.

7. Further medical treatment is required to cure or relieve from the effects of this injury after notice of

need made upon defendant.

8. Defendants did not unreasonably delay payment of benefits.

9. Lien claims have been determined in companion case 71 LA 371 256.

AWARD

AWARD IS MADE in favor of WAYNE LAVELLE against LIBERTY MUTUAL INSURANCE COMPANY of permanent disability indemnity.

in accordance with Finding 6 hereinabove; together with medical treatment in accordance with Finding 7 hereinabove.

IT IS ORDERED that the lien of Employment Development Department be and it is hereby disallowed.

JESSE E FLUHARTY
WORKERS COMPENSATION
JUDGE

EXECUTED:

APR 25 1979

Served on said date by mail on persons shown on official address record

by:_____

WORKERS COMPENSATION APPEALS BOARD
State of California

WAYNE C. LA VELLE Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE CO. Defendant	Case No. 73 LA 380 935 Case No. 73 LA 380 934 FINDINGS AND AWARD

Wayne C. LaVelle, Applicant
(in propia persona)
Kendig, Stockwell & Gleason by
Steven I. Harris
Attorneys for Liberty Mutual
Insurance Co.

****

Application having been filed herein, all parties appeared, and the matter having appeared, and the matter having been regularly submitted, the Honorable JESSE E FLUHARTY, Workers' Compensation Judge, now finds and orders as follows:

FINDINGS OF FACT

1. Applicant, Wayne C. LaVelle, born January 15, 1946, was employed as a ramp serviceman, air transportation industry, at Los Angeles, California, on December 13, 1972, by Trans World Airlines, who insurance carrier on said date was Liberty Mutual Insurance Company, when he sustained an injury arising out of and

occurring in the course of his employment to his right knee.

2. This injury caused no temporary disability

3. This injury caused no increased permanent disability.

4. Further medical treatment to cure or relieve from the effects of this injury is not required.

5. Lien claims have been determined in the companion cases.

ORDER

IT IS ORDERED that applicant take nothing.

JESSE E FLUHARTY
WORKERS COMPENSATION
JUDGE

EXECUTED:

APR 25 1979

Served on said date by mail on persons shown on official address record.

by:

WORKERS' COMPENSATION APPEALS BOARD
State of California

WAYNE C. LA VELLE Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY Defendant	Case No. 73 LA 380 936 FINDINGS AND ORDER

Wayne C. LaVelle, Applicant (in propria persona)

Kendig, Stockwell & Gleason, by Steven T. Harris

Attorneys for Liberty Mutual Insurance Co.

****

Application having been filed herein, all parties having appeared, and the mztter having been regularly submitted, the Honorable JESSIE E. FLUHARTY, Workers' Compensation Judge, now finds and orders as follows:

FINDINGS OF FACT

1. Applicant, Wayne C. LaVelle, born January 15, 1946, was employed as a ramp serviceman, air transport industry, at Los Angeles, Ca, on February 12, 1973, by Trans World Airlines, whose insurance carrier on said date was Liberty Mutual Insurance Company, when he sustained an

injury arising out of and occurring in the course of his employment to his right knee.

2. Applicant's earnings were maximum for both temporary and permanent disability.

3. Applicant has been fully compensated for temporary disability which was paid February 13, 1973 to and including August 1, 1973.

4. Employment Development Department paid unemployment compensation disability benefits for period beginning April 23, 1973 to July 29, 1973, at $105.00 per week concurrently with the period of temporary disability herein, however, there are no funds upon which to impress a lien.

5. This injury caused no ratable permanent disability.

6. Lien claims have been determined in the companian cases.

ORDER

IT IS ORDERED that applicant take nothing.

Executed:
APR 25 1979

JESSE E FLUHARTY
WORKERS COMPENSATION
JUDGE

WORKERS COMPENSATION APPEALS BOARD
State of California

WAYNE C. LA VELLE Applicant v TRANS WORLD AIRLINES, ET AL Defendant	Case No.: 74 LA 392 377 74 LA 387 156 73 LA 380 934 73 LA 380 935 73 LA 380 936 74 LA 392 422 76 ING 38740

ORDER JOINING
PARTY DEFENDANT

GOOD CAUSE APPEARING

IT IS ORDERED that INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, Local Lodge No. 1111 and District Lodge 142, be joined as a party defendant herein in the above numbered cases.

JESSE E FLUHARTY
WORKERS COMPENSATION
JUDGE

EXECUTED ON:
FEB 2 1977

Served on said date by mail on persons shown on the official address record.

by:_____

(Applicant is to serve copy of this order and application on newly joined parties.)

WORKERS' COMPENSATION APPEALS BOARD
State of California

WAYNE LA VELLE SS# 363 2338 Applicant v TRANS WORLD AIRLINES, LIBERTY MUTUAL INSURANCE COMPANY Defendant	Case No. 74 LA 387 156 ORDER OF DISMISSAL

WHEREAS application herein is for alleged specific incident of January 22, 1974, and continuing trauma;

WHEREAS in view of the fact that the within case merges into Case No. 74 LA 392 377 and is a duplicate of 74 LA 392 377;

IT IS HEREBY ORDERED that Case No. 74 LA 387 156 be and the same is hereby dismissed.

JESSE E. FLUHARTY
WORKERS' COMPENSATION
JUDGE

EXECUTED: February 25, 1980

Served on said date by mail
on persons shown on official
address record
by:_____

WORKERS' COMPENSATION APPEALS BOARD
State of California

WAYNE C. LA VELLE SS# 363 46 2338 Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS LOCAL 1111; DISTRICT 142 of INTERNATIONAL ASSOCIATION OF MACHININSTS Defendants	Case No. 74 LA 392 377 FINDINGS AND AWARD

Wayne C. LaVelle, Applicant
(in propria persona)

Rose, Klein & Marias, by
Eugene Marias
Attorneys for International Association of Machinists, District Lodge 142, Local 1111

Kendig, Stockwell & Gleason, by
Steven I. Harris
Attorneys for Liberty Mutual Insurance Company**********

Application having been filed herein, all parties having appeared, and the matter having been regularly submitted, the Honorable JESSE E. FLUHARTY, Workers' Compensation Judge now finds awards and orders as follows:

FINDINGS OF FACT

1. Applicant, Wayne C. LaVelle, born January 15, 1946, was employed as a ramp serviceman in the aircraft industry in Los Angeles, California, during the period August 4, 1972 to an including October 25, 1974, by Trans World Airlines, whose workers' compensation insurance carrier during the above period was Liberty Mutual Insurance Company, when he sustained injury arising out of and occurring in the course of his employment resulting in emotional and mental illness.

2. Applicant was also employed as a shop steward during the period June 1, 1971 to and including December 31, 1972, by Local Lodge 1111 of the International Association of Machinists and Aerospace Workers, which was uninsured for workers' compensation purposes during the above-mentioned period, and sustained injury as indicated in Finding of Fact 1 hereinabove.

3. Applicant was also employed as a shop steward during the period June 1, 1971 to December 31, 1972 by District 142 of the International Association of Machinists and Aerospace Workers', which

was uninsured for workers compensation purposes during the abovementioned period, and sustained injury as indicated in Finding of Fact 1 hereinabove.

4. Applicant's earnings were maximum for both temporary and permanent disability ($105.00 - $70.00).

5. This cause of action is not barred by the Statute of Limitations.

6. Medical treatment is required to cure or relieve from the effects of this injury. Liberty Mutual Insurance is designated to furnish and control medical treatment, subject to reimbursment by Local Lodge 1111 of the International Association of Machininsts and Aerospace Workers, to be adjusted by the parties.

7. This injury caused temporary disability beginning January 22, 1974 to and including February 28, 1974, for which endemnity is payable at the rate of $105.00 per week.

8. Employment Development Department paid unemployment compensation disability benefits and is allowed a lien for payments at the rate of

$105.00 per week, beginning January 30, 1974 to February 28, 1974, in the total sum of $450.00, for which period temporary disability was found herein.

9. This injury caused permanent disability after apportionment of 13-3/4 per cent, amounting the 45.25 weeks of disability payments at the rate of $70.00 a week in the total sum of $3,167.00, payable forthwith.

10. Liability of each defendant herein, Liberty Mutual Insurance Company, Local Lodge 1111 of the International Association of Machinists and Aerospace Workers, and Distict 142 of the International Association of Machinists and Aerospace Workers, is found to be joint and several.

11. Liberty Mutual is appointed managing carrier, subject to contribution to be worked out in separate proceedings.

12. Applicant is entitled to reimbursment for expenses of self-procured medical tratment required to cure or relieve from the effects of this injury in amounts to be adjusted by the parties, including but not limited to the sum of

$855.00 payable to Leonard Neff, M.D., and $1,375.00 payable to Valley Psychiatric Medical Clinic/Dr. Eisenberg, subject to reimbursment only for services provided to applicant during the period of injury herein.

13. The lien claim of Lien Services, Inc. for Connecticut General Life Insurance Company in the sum of $3,686.70 is for payments to doctors and hospitals for services to the applicant on dates prior to the period of injury herein and/or other parts of body injured and is hereby disallowed.

14. Applicant is entitled to reimbursement for medical-legal expenses in amounts to be adjusted by the parties including but not limited to $225.00 payable to Bruce Medical Group, $300.00 to valley Psychiatric Medical Clinic/ Dr. Eisenberg, and $150.00 to Law Offices of William C. Gordon in reimbursement for payment to Martin Blinder, M.D.

15. A penalty will not be imposed.

16. Applicant's former attorney, Hermet Mathews has been awarded a fee in Case 71 LA 371 256.

17. Applicant's former attorney, Law Offices of William C. Gordon, 66 Montgomery Street, Suite 600, San Francisco, Ca, 94104, has rendered services of the reasonable value of $350.00.

AWARD

AWARD IS MADE in favor of WAYNE C. LAVELLE against LIBERTY MUTUAL INSURANCE COMPANY, LOCAL LODGE LLLL OF THE INTERNATIONAL ASSOCIATION OF MACHININSTS AND AEROSPACE WORKERS, jointly and severally with LIBERTY MUTUAL INSURANCE COMPANY as managing carrier in accordance with Finding 11 hereinabove; of temporary disability indemnity in accordance with Finding 7 hereinabove; together with permanent disability indemnity in accordance with Finding 9 hereinabove; together with medical treatment in accordance with Finding 6 hereinabove; together with reimbursement for self procurred medical treatment expenses in accordance with Finding 12 hereinabove; together with medical-legal costs in accordance with Finding 14 hereinabove; less $450.00 payable to Employment Development Department in satisfaction of its lien claim; less $350.00 to Law

offices of William C. Gordon, as attorney fee herein allowed.

IT IS FURTHER ORDERED that the lien claim of Lien Services Inc. for Conneticut General Life Insurance Company be and the same is hereby disallowed.

IT IS FURTHER ORDERED that STATE COMPENSATION INSURANCE FUND be and it is hereby dismissed as party defendant herein.

JESSE E. FLUHARTY
WORKERS COMPENSATION
JUDGE

EXECUTED: February 25, 1980
Served on said date by mail on persons on official address record
by:_____

WAYNE C. LAVELLE
Case No. 74 LA 392 377

Notation directing the Court to an ommission to Judge's opinion on Petition on Reconsideration on Workers' Compensation Appeals Board Case No. 74 LA 392 377.

The Above opininion on reconsideration has been omitted in printing this appendix because (1) the length of the report is 13 full pages, (2) it involves three separate petitions for reconsiderations, and (3) the final order by the board reflects their traditional view expressed throughout the printed cases herein.

Upon issue of writ of Certiorari, Petitioner will include this portion of the record because it does evidence the incompetency of petitioner at the time of the trial.

CASE NO. 74 LA 387 156

WAYNE C. LA VELLE v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY

Worker's Compensation Judge; JESSE E. FLUHARTY

Dated: April 15, 1980

REPORT OF WORKERS' COMPENSATION JUDGE ON PETITION FOR REGNSIDERATION

I

INTRODUCTION

Applicant, Wayne LaVelle, a ramp serviceman in the airport industry, Age 28 on January 22, 1974, alleged date of injury, alleged emotional stress and emotional illness as a result of stresses incurred on the job while employed by Trans World Airlines.

Decision complained of is an Order of Dismissal issued on February 25, 1980. Petition for Reconsideration was filed March 24, 1980, which is 28 days after the filing of decision and is three days late, since 20 days is allowed in which to file and 5 days for mailing. However, the Board can, if it so desires, grant an extension on the petition for reconsideration on its own motion within 60

days period and it may desire to do so in view of the fact that the applicant is in pro per.

Petition is signed, verified and served upon opposing parties and consequently is not legally deficient.

Petitioner is applicant, in pro per, herein, and his contentions are that pleadings are incorrect and that even though the pleadings were filed by an attorney whom applicant had hired at the time, that he really meant for the pleadings to encompass a period instead of a specific incident.

II

DISCUSSION

The court considered this in its Opinion on Decision which is set forth below in haec verba:

This is a series of cases which were commenced with the filing of an application on November 10, 1971, in connection with an incident occurred August 4, 1970 to the applicant's right knee while employed as a ramp serviceman at Trans World Airlines.

Subsequent thereto as this litigation

progressed, applicant had other incidents and filed during the course of the litigation 12 applications, i.e., 11 additional ones.

There have been a number of hearings and stipulations were secured and issues framed at various hearings. Consequently those matters placed in issue will be discussed separately below.

Decisions have issued in ten cases and there are two cases left, as follows:
(a) 74 LA 392 377, date of injury Aug. 4, 1972 to and including October 22, 1974, alleging mental and emotional stress as a result of harrassment by International Association of Machinists and Aerospace Workers, Trans World Airlines and Liberty Mutual Insurance Co.

(b) 74 LA 387156, date of injury January 22, 1974, alleging emotional stress. The employer Trans World Airlines, and Liberty Mutual Insurance Company.

Each will be discussed separately below:

74 LA 387 156

The issues in connection with 71 LA 371 256 are as set forth in the Minutes of

Hearing of August 2, 1973 and were adopted by stipulation on Dec. 13, 1976, except that date of injury was stipulated to be January 22, 1974 and the injury was claimed to be emotional stress. This case must be dismissed.

The reasons therefor are as follows: Although applicant alleges a specific incident one notes that he alleges continuing trauma. The allegation in the application contains the following:

> "Persistent harassment and stress created by employer and applicant's superiors."

For something to be persistent it must exist over a period of time. Obviously applicant has not pleaded a specific incident.

Webster's Seventh New Collegiate Dictionary defines "persistent" as:

> "Continuing to exist for a long or longer than usual time."

After reading applicant's Petition for Reconsideration the court is still of the opinion that applicant is attempting to convert a specific incident into a cumulative trauma which cannot be done.

III

RECOMMENDATION

It is therefore respectfully recommended that Petition for Reconsideration lacks merit and should be denied.

JESSE E. FLUHARTY
WORKERS COMPENSATION
JUDGE

JEF:ch

Service by mail on April 15, 1980
by:_____

WAYNE LA VELLE, 45 Reed Bl. #2, Mill Valley, CA, 94941; KENDIG, STOCKWELL, GLEASON, 8671 Wilshire Bl, Beverly Hills, CA 90211; ROSE, KLEIN, & MARIAS, 888 W. 6th St., Los Angeles, CA; EMPLOYMENT DEVELOPMENT DEPT., P.O. Box 990, Glendale, CA 91209; WILLIAM GORDON, ESQ. 44 Montgomery St. #600, San Francisco, CA 94104; GOSHKIN, POLLATSEK, MEREDITH & LEE, 22 Battery St #810, San Francisco, CA 94111; STATE COMPENSATION INS. FUND, 5860 Uplander Way, Culver City, CA

WORKER'S COMPENSATION APPEALS BOARD

WAYNE C. LA VELLE Applicant v TRANS WORLD AIRLINES: LIBERTY MUTUAL INSURANCE COMPANY Defendant	Case No. 74 LA 387 156 ORDER EXTENDING TIME ON PETITION FOR RECONSIDERATION

GOOD CAUSE APPEARING THEREFOR,

IT IS ORDERED that the time for making decision on the Petition(s) for Reconsideration be, and is hereby, extended thirty days from and after April 19, 1980.

WORKERS COMPENSATION
APPEALS BOARD

Mervin Glow

Dated and filed at San Francisco, CA.

APR 17, 1980

Service by mail on said date on the persons listed below:

Wayne C. LaVelle, 45 Reed Bl #2, Mill Vally Ca 94941; Kendig, Stockwell & Gleason, 8671 Wilshire Bl., Beverly Hills, CA 90211; Goshkin, Pollatsek et al., 22 Battery St., San Francisco, CA 94111

WORKERS' COMPENSATION APPEALS BOARD

WAYNE C. LA VELLE, Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY; INTERNATIONAL ASSOC. OF MACHINISTS AND AEROSPACE WORKERS LOCAL LLLL; DISTRICT 142 of INT'L ASSOC. OF MACHINISTS Defendant	Case No. 74 LA 392 377 ORDER EXTENDING TIME ON PETITION FOR RECONSIDERATION

GOOD CAUSE APPEARING THEREFOR,

IT IS ORDERED that the time for making decision on the Petition(s) for Reconsideration be, and is hereby, extended thirty days from and after

April 17, 1980 (Defendant)
April 19, 1980 (Applicant)
April 20, 1980 (Lien Claimant)

WORKERS COMPENSATION
APPEALS BOARD

Mervin Glow

Dated and filed at San Francisco, CA

APR 17 1980

Service by mail on said date on the persons listed below:

Wayne C. LaVelle, 45 Reed Bl.#2, Mill Valley, CA 94941; Kendig, Stockwell & Gleason, 8671 Wilshire B., Beverly Hills

CA 90211; Rose, Klein & Marias, 888 W. 6th St. Los Angeles CA; Lien Services, 15251 Ventura Bl.,Sherman Oaks, CA 91403

WORKERS COMPENSATION APPEALS BOARD
State of California

WAYNE C. LA VELLE Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE CO.; INTERNATIONAL ASSOC. OF MACHINISTS AND AEORSPACE WORKERS LOCAL 1111; DISTRICT 142 OF INT'L ASSOC. OF MACHINISTS Defendants	Case No. 74 LA 392 377 74 LA 387 156 ORDER DENYING RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration filed by applicant in Case No. 74 LA 392 377 and 74 LA 387 156 and the report of the workers' compensation judge in each case. Based on our review of the record, and for the reasons stated in said reports, in 74 LA 392 377 from pages 12 through 14 and in 74 LA 387 156, the entire report, which we adopt and incorporate, we deny applicant's Petitions for Reconsideration.

We have considered the allegations of the Petition for reconsideration by the International Association of Machinists and Aerospace Workers, Local 111, and District 142 of the International Assoc.

of Machinists in 74 LA 392 377 and the report of the workers' compensation judge. Based on our review of the record, and for the reasons stated in said report from pages 4 through 9, which we adopt and incorporate, we deny the Petition for Reconsideration.

We have considered the allegations of the Petition for Reconsideration filed by Lien Services, Inc., in 74 LA 392 377. Based on our review of the record, and for the reasons stated in said report, from page 10 to the top of page 12, which we adopt and incorporate, we deny Lien Services' Petition for Reconsideration.

IT IS ORDERED that the Petitions for Reconsideration filed herein be and they are hereby denied.

WORKERS COMPENSATION APPEALS BOARD

_____

I concur,

_____

_____

Dated and filed at San Francisco, CA
MAY 13 1980

Service by mail on all parties shown below at the adresses on the official address record.

Wayne C. LaVelle
Trans World Airlines
Assoc. of Machinists
Kendig, Stockwell & Gleason
Rose, Klein, Marias
Lien Services, Inc.
Liberty Mutual Ins. Co
Goshkin, Pollatsek, Meredith & Lee

WORKERS COMPENSATION APPEALS BOARD
State of California

WAYNE LA VELLE SS# 363 46 2338 Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE CO. Defendant	Case No. 74 LA 392 422 FINDING AND ORDER

Wayne C. LaVelle, Applicant
(in propria persona)
Kendig, Stockwell & Gleason
by Steven Harris
Attorneys for Liberty Mutual
Insurance Co.

****

Application having been filed herein, all parties having appeared and the matter having been regularly submitted, the Honorable JESSE E FLUHARTY, Workers' Compensation Judge, now finds and orders as follows:

FINDINGS OF FACT

1. Applicant, Wayne C. LaVelle, born January 15, 1946, was employed as a ramp serviceman, air transport industry, at Los Angeles, CA, on March 13, 1974, by Trans World Airlines, whose insurance carrier on said date was Liberty Mutual Insurance Company, when he sustained an

injury arising out of and ocurring in the course of hisemployment to his hand and arm as a result of exposure to chemicals.

2. This injury caused no temporary disability.

3. This injury caused no permanent disability.

ORDER: IT IS ORDERED that applicant take nothing.

JESSE E FLUHARTY
WORKERS COMPENSATION
JUDGE

EXECUTED:
MAY 25 1979

Dated and filed at Los Angeles, CA
served by mail on persons as shown on
official address record, date MAY 25 1979

WORKERS COMPENSATION APPEALS BORAD
State of CAlifornia

WAYNE C. LA VELLE Applicant v TRANS :WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY Defendant	Case No. 75 LA 394 945 FINDINGS AND AWARD

Wayne C. LaVelle, Applicant
(in propria persona)

Kendig, Sotckwell and Gleason
by Steven Harris
Attorneys for Liberty Mutual Insurance Company

****

Application having been filed herein, all parties having appeared, and the matter having been regularly submitted, the Honorable JESSE E FLUHARTY, Workers' Compensation Judge, now finds, award, and orders as follows:

FINDINGS OF FACT

1. Applicant, Wayne C. LaVelle, born Jan 15, 1946, was employed as a remp serviceman at Los Angeles, CA on Dec 31, 1974 by Trans World Airlines whose insurance carrier on said date was Liberty Mutual Insurance Company, when he sustained an injury arising out of and occurring in the course of his employment

to his back.

2. Some medical tratment was furnished by the carrier.

3. Applicant's earnings were maximum for both temporary and permanent disability, ($119.-$70.00).

4. This injury caused temporary total disability for the period Feb 27, 1975 to April 16, 1975, for which indemnity is payable at the rate of $119.00 per week, less credit to defendants in the sum of $1,020.00 paid on account thereof.

5. This injury caused no permanent disability.

6. Further medical treatment to cure or relieve from the effects of this injury is not required.

7. Applicant did not incur expenses for self procured medical treatment.

AWARDS

AWARD IS MADE in favor of WAYNE LA VELLE against LIBERTY MUTUAL INSURANCE CO. of temporary disability indemnity in accordance with Finding 4 hereinabove.

EXECUTED:
JUN 28 1979
Served by mail

JESSE E FLUHARTY
WORKERS COMPENSATION
JUDGE

CASE NO. 75 LA 394 945

WAYNE C. LA VELLE V TRANS WORLD AIR
LIBERTY MUTUAL
INSURANCE COMPANY

Workers' Compensation Judge: JESSE E
FLUHARTY

ated: Aug 3, 1979

REPORT OF WORKERS COMPENSATION JUDGE
ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

Applicant, Wayne C. LaVelle, by occupation a ramp serviceman, age 28 on date of injury, Dec 31, 1974, sustained injury arising out of and occurring in the course of his employment to his back, when he was bending and lifting as a ramp serviceman by Trans World Airlines.

Decision complained of is a findings of fact and conclusion of law and award issued by this court on June 28, 1979, and more specifically that portion thereof wherein it was found that there was no permanent disability.

Petitioner herein is applicant himself. The petition has been verified by the applicant has been made on the form supplied by the Board, consequently is legally effective. Decision issued

Jun 28, 1979. Petition for Reconsideration was filed Jul 23, 1979 within the 25 day period, consequently it seems to be timely.

The court examined the file carefully for evidence with respecr to this injury and medical reports with respect to this injury and set them forth in the Opinion on Decision which is set forth below in haec verba.

"PERMANENT DISABILITY

"According to Dr. John Cowan there was no permanent disability. He stated as follows:

> His case is stationary, but there are no factors to be rated.

"It should be noted that there is considerable evidence to the fact that his wife Marguerite exacerbated his condition when she kicked him. See the report of Paul Goodley, M.D. of Mar 1975:

> (Mrs. LaVelle reported) that she and Wayne had been in good spirits and that he was doing well, but that while he was kneeling and bending forward she inadvertently injured him by apparently kicking him "below the tail bone". She stated that he had fallen onto the floor of the living room,

> complaining of pain all over his back "from the top to the bottom". She stated that he had been on the floor for approximately one hour while she ad attempted to reach my (sic) by long distance, and it did take some persuasion before she told me the cause of the accident.

"In view of this evidence the court is of the opinion that any residuals applicant might have or to which he might complain could be allocated to the "horseplay" between him and his wife.

"In view of the above no permanent disability will be found/

II

DISCUSSION

Applicant is referring to medical reports in connection with other claimed incidents which are subject to litigation in connection with other cases.

As has been pointed out in the Opinion on Decision herein this is one of a series of cases, there being 12 in number. Most of the cases are concerned with a psychiatric claim and which will be decided at a later date. Applicant is attempting to confuse the issue by bringing in medical evidence in connection with the psychiatric case and introduc-

ing it into this record thereby confusing the results.

The court has carefully extracted from the record that material applying to the back and is of the opinion that there is no back disability as such.

III

RECOMMENDATION

It is therefore respectfully recommended that the Petition for Reconsideration lack merit and should be denied.

JESSE E FLUHARTY
WORKERS COMPENSATION
JUDGE

JEF:ch

Served by mail AUG3 1979

on:

Wayne LaVelle
Kendig, Stockwell, Gleason
Lien Services
Martin Blinder, M.D.
Gordon, Holstein, Ropers
Steven Novam, M.D.

WORKERS COMPENSATION APPEALS BOARD
State of California

WAYNE LA VELLE Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE Defendants	Case no. 75 LA 394945 ORDER DENYING RECONSIDERATION

We have considered the allegation of applicant's Petition for Reconsideration and the report of the Worker's Compensation judge with respect thereto. We have also considered applicant's Supplemental Petition for Reconsideration filed Sep 6, 1979. Based on our review of the entire record, a review of the authorites cited by applicant, and the report and recommendation of the worker's compensation judge which we adopt and incorporate, we deny applicant's Petition for Reconsideration.

IT IS ORDERED that applicant's Petition for Reconsideration, including the Spplemental Petition for Reconsideration be, and is hereby, DENIED.

WORKERS COMPENSATION
APPEALS BOARD

I CONCUR.

CONCURRING BUT NO SIGNING

DATED AND FILED AT SAT FRANCISCO CA

SEP 14 1979

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL ADDRESS RECORD

WORKERS COMPENSATION APPEALS BOARD
State of California

WAYNE C. LA VELLE Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY Defendant	Case No. 76 ING 38740 ORDER AMENDING FINDINGS AND AWARDS

Clerical error having occurred,

IT IS ORDERED that Findings and Award issued herein October 17, 1979, be and it hereby is amended as follows:

In each and every instance where "Liberty Mutual Insurance Company" is printed, that "Hartford Insurance Company" be substituted.

JESSIE E FLUHARTY
WORKERS COMPENSATION JUDGE

JEF:egb

Dated and filed at Los Angeles, CA,
served by mail

OCT 22 1979

Second service on Applicant October 24, 1979 at 16 Circle Dr. #3, Tiburon, CA 94920

WORKERS COMPENSATION APPEALS BOARD
State of California

WAYNE C. LA VELLE Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY Defendant	Case No. 76 ING 38740 FINDINGS AND AWARD

Wayne C. LaVelle, Applicant
(in propria persona)

Kendig, Stockwell & Gleason
by Steven Harriss
Attorneys for Liverty Mutual
Insurance Company

****

Application having been regularly submitted, the Honorable JESSE E FLUHARTY, Workers' Compensation Judge, now finds awards and orders as follows:

FINDINGS OF FACT

1. Applicant, Wayne C. LaVelle, born January 15, 1946, was employed as a fleet service helper, air transportation industry at Los Angeles, California on July 13, 1976, by Trans World Airlines whose insurance carrier on said date was Liberty Mutual Insurance Company, when he sustained an injury arising out of andoccurring in the course of his employment.

2. Applicant's earnings were maximum for temporary and permanent disability compensation ($119.00-$70.00).

3. This injury caused temporary disability beginning July 13, 1976 through December 4, 1976, for which indemnity is payable at the rate of $119.00 per week, less credit for sums paid on account thereof, if any.

4. Applicant has returned to pre-injury status and there is no permanent disability.

5. Medical treatment is required to cure or relieve from the effects of this injury.

6. Applicant reasonably incurred medical legal costs in amounts to be adjusted by the parties.

7. Defendant failed to provide medical treatment to cure or relieve from the effects of this injury and applicant incurred expense therefore in an amount to be adjusted by the parties primarily payable to Marvin P. Eisenberg, M.D. and John May, Valley Psychiatric Clinic.

AWARD

AWARD IS MADE in favor of WAYNE C.

LA VELLE against LIBERTY MUTUAL INSURANCE COMPANY of temporary disability indemnity in accordance with Finding 3 hereinabove; together with medical treatment; together with medical legal costs to be adjusted by the parties; together with expenses for self procured medical treatment in accordance with Finding 7 hereinabove.

JESSE E FLUHARTY
WORKERS COMPENSATION JUDGE

EXECUTED:

OCT 17 1979

Served on said date by mail on persons shown of offical address record

by:_____

Second Service by mail on Applicant OCT 24 1979 at 16 Circle Dr. #3, Tiburon, CA 94920

by:_____

WORKERS COMPENSATION APPEALS BOARD
State of California

WAYNE C. LAVELLE Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY; HARTFORD INSURANCE COMPANY Defendant	Case No. 76 ING 38740 ORDER DENYING RECONSIDERATION

We have considered the allegations of the Petitions for Reconsideration and the contents of the report of the Workers' Compensation Judge with respect thereto. Based on our review of the record, and for the reasons stated in said report which we adopt and incorporate,

IT IS ORDERED that said Petitions for Reconsiderations be, and they hereby are, DENIED.

WORKERS COMPENSATION
APPEALS BOARD

I CONCUR,
Mirwin Stow

CONCURRING BUT NOT SIGNING
H.J. MARTIN

DATED AND FILED IN SAN FRANCISCO, CA
DEC. 13, 1979 Service by mail

WORKERS COMPENSATION APPEALS BOARD
State of California

WAYNE C. LA VELLE Applicant v TRANS WORLD AIRLINES; HARTFORD INSURANCE CO. Defendant	Case. No. 76 ING 38740 OPINION AND ORDER GRANTING RECONSIDERATION ON BOARD MOTION (LABOR CODE § 5911) AND DECISION AFTER RECONSIDERATION

On December 13, 1979, the Board issued an Order Denying Reconsideration in this case. On December 21, 1979, counsel for defendant wrote to the Board in San Francisco (with a copy to applicant) inquiring as to whether or not the Board had made a clerical error in issuing its Order Denying Reconsideration at least as it pertained to the defendant's contention. Defense counsel stated in the letter, in part, as follows:

> However, a review of the report of Judge Fluharty with reference to the Petition of Hartford is to the effect that not only was said Petition for Reconsideration timely filed but that due process

> had been denied that defendant through inadvertence and consequently recommending that said defendant Petition for Reconsideration be granted. Before undertaking further proceedings, we are requesting that the Commission advise this office as to whether inadvertent error was committed with regard to Hartford's Petition for Reconsideration, and whether on reconsideration, the Board intends to reverse its previous Order and grant said Petition.

On further review of the file it appears that there was a clerical error and that only applicant's petition was actually disposed of. This is true even though the Order Denying Reconsideration refers to the "Petitions for Reconsideration". The Order is also inconsistent with the Report of Workers' Compensation Judge on Petition for Reconsideration which the Order purports to incorporate but, as to defendant's petition, does not do so.

We will grant reconsideration on Board motion and affirm the Order Denying Reconsideration as to applicant's petition and grant defendant's petition in accordance with the recommendation of

the workers' compensation judge in his report on reconsideration. We point out that even if we were not to act it is not unlikely that defendant would seek review of this matter by the Court of Appeal within the statutory period, resulting in further delay and the necessity of the Appeals Board confessing error.

Based on the foregoing,

IT IS ORDERED that reconsideration be, and it is hereby, GRANTED on Board motion.

IT IS FURTHER ORDERED that the Order Denying Reconsideration dated December 13, 1979 be, and it is hereby, AFFIRMED as to applicant's petition.

IT IS FURTHER ORDERED that the Order Denying Reconsideration as itpertains to defendant be, and it hereby, RESCINDED.

IT IS FURTHER ORDERED that this case be returned to the trial level for further proceedings and decision in accordance with the recommendation of the workers' compensation judge.

WORKERS' COMPENSATION
APPEALS BOARD

I CONCUR.

_____

_____

DATED AND FILED AT SAN FRANCISCO, CA

JAN 22 1980

SERVICE BY MAIL ON SAID DATE TO ALL PARTIES LISTED ON THE OFFICIAL ADDRESS RECORD.

WORKERS COMPENSATION APPEALS BOARD
State of California

WAYNE C. LA VELLE Applicant v TRANS WORLD AIRLINES; HARTFORND ACCIDENT & INDEMNITY COMPANY Defendant	Case. No. 76 LA 403 651 FINDINGS AND AWARD

-James George by Joseph M. Miller, attorney for applicant
-Even, Dalby & Cumming by F. Evans, attorney for defendant.

An application having been filed herein; all parties having appeared and Order Admitting Documentary Evidence and Notice of Intention to Submit having issued, the Honorable JESSE E FLUHARTY, Workers' Compensation Judge, Finds and Orders as follows:

1. Wayne C. La Velle, born January 15, 1946, did on February 18, 1976, sustain an injury to his lungs and internal organs as a result of inhalation of chemical fumes, arising out of and occurring in the course of his employment as an aircraft fleet serviceman by Trans World Airlines whose compensation insurance carrier was Hartford Accident & Indemnity Company.

2. Applicant's earnings were then

maximum.

3. The injury caused further temporary disability beginning March 27, 1976, to and including April 25, 1976, at $119.00 per week.

4. Applicant suffered no compensable permanent disability.

5. Further medical treatment to cure or relieve from the effects of this injury is not required.

6. There was no self-procured medical treatment.

7. There is no basis for apportionment.

8. Applicant reasonably, actually, and necessarily incurred expense for medical reports to prove contested cases payable $950.00 to Reuben Merliss, M.D. and $34.50 to Cogan Clinical Laboratory.

9. As there is no Award, there is no basis for an attorney fee.

10. Employment Development Department furnished benefits of $111.00 per week beginning March 25, 1976, to and including April 25, 1976, concurrently with temporary total disability indemnity in the total sum of $507.43.

11. Applicant's attorney has been successful in securing further temporary dis-

ability through his sole efforts, and so he will be allowed an attorney's fee of 10% of the Employment Development lien, amounting to $50.74.

AWARD

AWARD IS MADE in favor of Wayne C. LaVelle, applicant against Hartford Accident & Indemnity Company of further temporary disability indemnity beginning March 27, 1976, to and including April 25, 1976, at $119.00 per week, in the total sum of $510.00; together with payment of medical-legal costs in the sum of $950.00 payable to Reubin Merliss, M.D and $34.00 payable to Cogan Clinical Laboratory; less the sum of $507.43 payable to Employment Development Department as reimbursement for benefits furnished concurrently with temporary total disability.

ORDER

IT IS ORDERED that Employment Development Department pay directly to James George the sum of $50.74, attorney fee, as set forth in Finding N. 11.

JESSE E FLUHARTY
WORKERS COMPENSATION
JUDGE

Filed at San Francisco, CA

Served by mail to persons shown on
the official address record

OCT 10, 1979

Supreme Court, U. S.
FILED
JUL 17 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1992

WAYNE C. LA VELLE,

Petitioner,

vs.

WORKERS' COMPENSATION APPEALS BOARD, STATE OF CALIFORNIA; TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS LOCAL 1111, DISTRICT 142 OF THE INT'L ASSOCIATION OF MACHINIST; HARTFORD ACCIDENT & INDEMNITY COMPANY,

Respondents.

BRIEF IN OPPOSITION TO THE WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT DIVISION ONE

KENDIG, STOCKWELL & GLEASON
A Professional Corporation

WILLIAM HERBERT ANDERSON

Seventh Floor
8671 Wilshire Boulevard
Beverly Hills, CA 90211
(213) 659-7880

Attorneys for Respondent,
Liberty Mutual Ins. Company
and Trans World Airlines

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. _____

WAYNE C. LA VELLE,

Petitioner,

vs.

WORKERS' COMPENSATION APPEALS BOARD, STATE OF CALIFORNIA; TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS LOCAL 1111, DISTRICT 142 OF THE INT'L ASSOCIATION OF MACHINIST; HARTFORD ACCIDENT & INDEMNITY COMPANY,

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Attorneys for Respondent,
Liberty Mutual Ins. Company
and Trans World Airlines

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IN THE

SUPREME COURT OF THE UNITED STATED

October Term, 1979

NO. _____

WAYNE C. LA VELLE,

Petitioner,

-vs-

WORKERS' COMPENSATION APPEALS BOARD, STATE OF CALIFORNIA; TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY; INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS LOCAL 1111; DISTRICT 142 OF THE INT'L ASSOCIATION OF MACHINIST; HARTFORD ACCIDENT & INDEMNITY COMPANY.

Respondents.

BRIEF IN OPPOSITION TO THE WRIT OF CERTIORARI

TO THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

JURISDICTION

Petitioner has asked for review of a decision of the First Appellate District, Division One of the Court of Appeal, Appellate District State of California. As Petitioner points out on page 4, the case involved therein which was First Civil Number 47704, is the Workers' Compensation Appeals Board Case, 74 LA 391394, which is an injury of May 4, 1974 involving the left hand and arm. The Supreme Court denied hearing on March 20, 1980.

Other cases referred to in the Petitioner's Writ of Certiorare are either still in litigation or are currently on appeal to the Court of Appeal, First Appellate District, state of California, bearing First Civil #49089. As of the date of July 10, 1980, that Appeal has not yet be determined. Respondent respectfully suggests that the United States Supreme Court would only have Jurisdiction over content of First Civil #47704 as all other matters referred to by the Petitioner are currently at other stages of Administrative Appeal.

Respondent respectfully submits however that the United States Supreme Court has no jurisdiction because the federal questions raised at this time were not previously raised in the State Courts.

Petitioner has not complied with Rule 23 (1)(f) by specifying the stage of the state proceedings in which he raised the question he now seeks reviewed.

QUESTIONS PRESENTED. I AND II

Question I and Question II as presented by the Petitioner appear to be the same question: Does the denial of appointment of counsel for a claimed indigent in a workers' compensation proceeding deprive claimant of his rights under the Fourteenth Amendment?

For this Writ to be granted, Petitioner must establish his indigent status.

Petitioner does not establish when, where or how he claimed to be an indigent.

Petitioner never asserted he was indigent

at any stage of the trial or appellate proceedings related to his injury of May 4, 1974.

The Petitioner analogizes his right to counsel in Workers' Compensation Cases with cases involving personal liberty and property rights. Personal liberty is not at stake in workers' compensation proceedings as it is in criminal matters, and, no property is taken from the injured worker at any workers' compensation proceeding. Petitioner analogizes the mental status of an injured worker making a claim to the mental status of one who has been arrested and imprisoned. The analogy is not factually relevant.

In California, the fact of an injured worker's economics status is not determinative of the fact of attorney representation. Fees for attorneys representing the injured worker in California Workers' Compensation Actions are determined by the Trial Judge.

Attorney fees are Awarded only when there is an Award of Compensation Benefits. Although the wording of Labor Code Sec. 4903(A) is permissive, the Appeals Board has no discretion to disallow a lien for attorney's fees where it is established that the attorney did furnish services of value. Therefore, for rich or poor, there is attorney representation available for free until such time as the attorney performs valuable services, and, then a fee is awarded against benefits received. The fee is a percentage of the recovery from nine(9) to twelve (12) per cent depending on the complexity of the case.

Labor Code Sec. 4903(A) authorizes the Appeals Board to determine and allow as a lien a reasonable attorney's fees for services rendered together with reasonable disbursements in connection with the litigation.

Thus, whereas attorney Emmet Matthews filed a lien for services in the sum of $4,000.00, the Judge only awarded the attorney $250.00 in the

Findings and Award of April 25, 1979, in case number 71 LA 371-256.

As to the question of inexperience, the applicant was free to choose the method of his representation, and, the record does not reveal his request to have an attorney appointed on his behalf. It should seem clear from the number of Awards contained in Petitioner's appendex to this Petition for Writ, that the Petitioner has processed his claims to a degree that he has received compensation of varying specie on the majority of his claims. The Petitioner asserts that there are few attorneys who represent the injured worker. There are hundreds of attorneys qualified to do so either by their general experience or by the fact that they have been certified by the State of California as Workers' Compensation Specialists. There is an association of applicant's attorneys, California Applicant's Attorney's Association, and the Los Angeles County Bar has a lawyer referral service.

It is not be lack of appointment, but rather, by choice, that the applicant had no attorney. He admits himself, that he was represented by two different attorneys at various times during the proceedings.

The Petitioner admits that he rejected the assistance of counsel twice. The Petitioner claims that without the assistance of counsel that he cannot determine the lawfullness of his claim or the validity of Motions. Assistance of counsel for the injured worker is not required for this. Such determinations are within the province of a Trial Judge. Petitioner claims that an individual who is not trained cannot possibly know or pursue the technical, elaborate and sophisticated measures necessary to assemble and appraise the facts and the law in connection with his case. Yet, the Wrokers' Compensation Act is drawn in such a way that it is not a technical and elaborate procedure.

"No informality in any proceeding nor

> in the manner of taking any testimony shall invalidate any Order, Decision, or Award or Rule made and filed as specified in this Provision. No Order, Decision, Award or Rule shall be invalidated because of the admission into the record and used as proof of any fact in dispute, of any evidence not admissible under the Common Law or Statutory Rules of Evidence and Procedure. It is not required to know Rules of Evidence. There are no texhnicalities involved. The Proceedings are informal and there are no strict Rules of Procedure to follow under California Labor Code, Sec. 5709."

Petitioner would claim that he has been left at sea by not having counsel, yet, he does admit that the Judge acted as a liason between multiple defense counsel and the applicant (page 19) and admits that the Judge was a "sound Judge" (page 21). On page 21 of his Writ, the Petitioner attempts to show the difficulty of the aspects of the Trial by quoting language made by counsel for Hartford Accident & Indemnity in its Petition for reconsideration. The case in which that statement was made is 76 ING 38740, a case this respondent respectfully suggests that this Court does not have jurisdiction over at this time.

And, a case not involving this respondent, Liberty Mutual Insurance Company.

On page 16 of his Writ, Petitioner states that the Judge allowed his attorney to be released, over Petitioner's protest. However, it is true with respect to one case only. The Petitioner at the time had no legal representation on his other cases, and, asked for none.

Counsel was relieved in 76 LA 403-651. Joseph Miller was the attorney relieved. Joseph Miller represented the applicant in 76 LA 403651 only, That case involved Hartford Accident and Indemnity Company. It did not involve Liberty Mutual Insurance Company as the carrier for Trans World Airlines. It did not involve International Association of Machinists and Aerospace Workers Local 1111. It did not involve District 142 of the International Association of Machinists.

Petitioner claims that the well-known adage that "he, that is his own lawyer has a fool for

a client" has a psychiatric basis. There is no foundation for this statement. Such a statement is nothing more than wit. For the Petitioner's arguments to have any merit, he must have to establish not only his indigent status and his incompetency, but, also show that such factors resulted in a Trial that was not fair. He makes no attempt to show that he has not received a fair Trial, and, on page 9, paragraph 3 of his Writ, even admits that the Judge was trying to help him.

QUESTION PRESENTED III

Has Petitioner been denied a fair trial by failure of the Trial Judge to invoke the provisions of California Labor Code 5408 and appoint a guardian for Petitioner who now claims he was incompetent..

Petitioner never claimed incompetency at any stage of the trial, and, the record is devoid of any medical reports asserting that the Petitioner was incompetent, or, either unable to

manage his own affairs, or, unable to prosecute his litigation. The Petitioner brings forth no medical opinion in his Writ to augment his allegation either.

Does Petitioner claim that he is still incompetent? If so, then we must note that his Writ herein demonstrates clear intellectual functioning.

If Petitioner only asserts that he was incompetent at the time of his trial, then he should now be able to set forth facts establishing the incompetency, as well as speak to the question of how he was able to testify fully concerning his various accidents and subsequent medical treatment.

The Petitioner asserts that the Appeals Board Judge had knowledge and observation of the Petitioner's psychological condition and yet failed to protect the Petitioner. The Petitioner does not set out any form of conduct which should have given rise to some suspicion

of incompetency on the part of the Trial Judge. It is a well known fact that the Workers' Compensation Laws of this State do tend to protect the employee. Neither Stipulations nor Settlements are accepted unless they meet a minimum standard of adequacy. It is entirely inconceivable that the Trial Judge, Jesse Fluhart, would allow the Petitioner to maintain his case over several Hearings if he did feel that he was incompetent. Judge Fluharty is a former Presiding Judge of the Los Angeles Workers' Compensation Appeals Board, and is presently the presiding Judge of the Central South Division in Los Angeles. Any Judge, let alone a Judge of Fluharty's background and experience would not allow an incompetent to proceed before him. The Petitioner has done nothing to establish that there was an element of incompetency to which the Judge should address himself.

There is no proof such incompetency, such

proof being a prerequisite to assert the argument that the Workers' Compensation Judge failed to invoke the Provisions of Labor Code Sec. 5408 and denied due process. He has never submitted any documentation regarding past or present incompetency during any stages of the Trial, or, the subsequent stages of Appeal. He is attempting to inflame the record by this bald insertion, which is contradicted by the fact that there were various reports filed containing observations as to psychiatric problems but none as to incompetency. The Petitioner attempts to contrast his mental state with incompetence. However, he has never claimed that he has suffered mental injury resulting in incompetency or organic brain damage. Rather, he has claimed only a degree of psychoneurosis in his other case 74 LA 392-377, currently on Appeal to the Court of Appeal, First Appellate District, State of California.

In 74 LA 392-377, the Petitioner was

awarded psychiatric disability of 13 1/2 per cent out of possible 100 per cent disability. Obviously, a relatively mild psychoneurosis has been determined.

CONCLUSION

For these reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

WILLIAM HERBERT ANDERSON, Esq.
8671 Wilshire Blvd., 7th Floor
Beverly Hills, CA 90211

STATUTES INVOLVED

Liens against amount to be paid as compensation Sec. 4903.

The appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (g) of this section. If more than one such lien be allowed, the appeals board may determine the priorities, if any, between the liens allowed. The liens which may be allowed hereunder are as follows: (a) A reasonable attorney's fee for legal services pertaining to any claim for compensation either before the appeals board or before any of the appellate courts, and the reasonable disbursement in connection therewith...

Enacted 1937; Amended Stats 1945 ch507 Sec 1; Stats 1947 ch 833 Sec 1; Stats 1949 ch 488 Sec 1; Stats 1957 ch 1977 Sec 1; Stats 1963 ch 1556 Sec 1; Stats 1965 ch 1513 Sec 103, operative January 15, 1966; Stats 1967 ch 1721 Sec 2.

INFORMALITIES AND INADMISSIBLE EVIDENCE Sec. 5709

No informality in any proceeding or in the manner of taking testimony shall invalidate any order, decision, award, or rule made and filed as specified in this decision. No order, decision, award, or rule shall be invalidated because of the admission into record, and use as proof of any fact in dispute, of any evidence not admissible under the common law or statutory rules of evidence and procedure.

Enacted 1937; Amended Stats ch 1431 Sec 75; Stats 1951 ch 779 Sec 9.

MINORS AND INCOMPETENTS Sec 5408

If an injured employee or, in the case of death, any of his dependents, is under 18 years of age or incompetent at any time when any right or privilege accrues to such employee or dependent under this division, a general guardian, appointed by the Court, or a guardian ad litem or trustee appointed by the appeals board may,

on behalf of the employee or dependent, claim and exervise any right or privilege with the same force and effect as if no disability existed.

No limitation of time provided by this division shall run against any person under 18 years of age or any incompetent unless and until a guardian or trustee is appointed. The appeals board may determine the fact of the minority or incompetency of any injured employee and may appoint a trustee to receive and disburse compensation payments for the benefit of such minor or incompetent and his family.

Enacted 1937; Amended Stats 1965 ch 1513 Sec 138, operative January 15, 1966; Stats 1971 ch 822 Sec 1, ch 1748 Sec 49.

APPENDIX I

WORKERS' COMPENSATION APPEALS BOARD
State of California

WAYNE C. LA VELLE SS# 363 46 2338 Applicant v TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY Defendants	Case No. 71 LA 371 256 FINDINGS AND AWARD

Wayne C. LaVelle, Applicant
(in propia persona)
Kendig, Stockwell & Gleason
by Steven Harris
Attorneys for Liberty Mutual
Insurance Company

****

Application having been filed herein, all parties having appeared, and the matter having been regularly submitted the Honorable JESSE E FLUHARTY, Workers' Compensation Judge, now find, awards, and orders as follows:

FINDING OF FACT

1. Applicant, Wayne C. LaVelle, born February 15, 1946, was employed as a ramp serviceman, air transportation industry, at Los Angles, California, on August 4, 1970, by Trans World Airlines, whose carrier on said date was Liberty

Mutual Insurance Company, when he sustained an injury arising out of and occurring in the course of his employment to his right knee.

2. Applicant's earnings were maximum for both temporary and permanent disability.

3. Applicant has been fully compensated for temporary disability for broken periods through August 1, 1973.

4. Applicant became permanent and stationary August 31, 1972.

5. Employment Development Department paid unemployment eompensation disability benefits for period beginning April 21, 1973 to July 29, 1973, at $105.00 per week concurrently with the period in which temporary disability payments were paid by defendants, however, there are no funds upon which to impress a lien.

6. This injury caused permanent disability of 8-1/4 per cent after apportionment, amounting to 33 weeks of disability payments at the rate of $52.50 a week in the total sum of $1,732.50 payable forthwith.

7. Medical treatment is required to cure or relieve from the effects of this

injury after notice of need made upon defendant.

8. Transamerica Credit Corporation advanced living expenses to the applicant subsequent to the injury of the reasonable value of $246.54.

9. Andre LaVelle advance living expenses to the applicant subsequent to the injury of the reasonable value of $660.00.

10. Applicant is entitled to self procured medical treatment expenses incurred payable as follows: $1,333.000 to Dr. R. Hunt, $50.00 to McGraw Medical Corporation, $431.00 to Glendale Memorial Hospital, $71.50 to Dr. R. Call, $967.80 to South Bay Hospital and $200.00 to Applicant.

11. Applicant reasonably incurred expense for medical reports to prove a contested case of the reasonable value of $150.00 payable to Dr. L Yamshon, $135.00 payable to Dr. R. Roback, and $200.00 payable to Mental Health Institute.

12. The reasonable value of the services of applicant's former attorney, Ermett C. Mathews, is $250.00.

13. Defendants did not unreasonably delay payment of benefits.

AWARD

AWARD IS MADE in favor of WAYNE C. LA VELLE against LIBERTY MUTUAL INSURANCE COMPANY of permanent disability indemnity in accordance with Finding 6 hereinabove; together with medical treatment in accordance with Finding 7 hereinabove; together with expenses for self procured medical treatment in accordance with Finding 10 hereinabove; together with medical legal costs in accordance with Finding 11 hereinabove; less $250.00 to Ermet C. Mathews in satisfaction of lien for attorney's fee herein allowed.

IT IS ORDERED that the lien claim of Employment Development be and it is hereby disallowed.

JESSE E FLUHARTY
WORKERS COMPENSATION
JUDGE

EXECUTED:
APR 25 1979
Served on said date by mail on persons shown on official address record
by: _____

APPENDIX II

WORKERS COMPENSATION APPEALS BOARD
State of California

WAYNE LA VELLE SS#363 46 2338 Applicant v TRANS WORLD AIRLINES LIBERTY MUTUAL INSURANCE COMPANY Defendant	Case no. 74 LA 391 394 FINDINGS AND AWARD

Wayne C. La Velle, Applicant
(in propria persona)

Kendig, Stockwell & Gleason
by Steven Harris
Attorneys for Liberty Mutual
Insurance Company

****

Application having been filed herein, all parties having appeared, and the matter having been regularly submitted, the Honorable JESSE E FLUHARTY, Workers' Compensation Judge, now finds , orders, and awards as follows:

FINDINGS OF FACT

1. Applicant, Wayne C. LaVelle, born January 15, 1946, was employed as a ramp serviceman, air transport industry, at Los Angeles, California, on May 4, 1974, by Trans World Airlines, whose insurance carrier on said date was Liberty Mutual

Insurance Company, when he sustained an injury arising out of and occurring in the course of his employment to his left hand and arm.

2. Applicant's earnings were maximum for both temporary and permanent disability ($119.00-$70.00).

3. This injury caused further temporary disability beginning July 24, 1974, to and including July 26, 1974, for which indemnity is payable in the total sum of $51.00.

4. This injury caused no permanent disability.

AWARD

AWARD IS MADE in favor of WAYNE C. LA VELLE against LIBERTY MUTUAL INSURANCE COMPANY of temporary disability indemnity in the saum of $51.00 payable forthwith.

JESSE E FLUHARTY

EXECUTED: MAY 25 1979

Dated and Filed at Los Angeles, CA
Served by mail on person as shown on offical address record MAY 25 1979

APPENDIX III

COURT OF APPEAL OF THE STATE
OF CALIFORNIA

in and for

FIRST APPELLATE DISTRICT

DIVISION ONE

WAYNE C. LA VELLE Petitioner v WORKERS COMPENSATION APPEALS BOARD, ET AL. Respondents	1 Civ. No. 47704 ORDER DENYING WRIT OF REVIEW

BY THE COURT:

The petition for writ of review is denied.

RACANELLI, P.J.

Dated FEB 22 1980

CALIFORNIA SUPREME COURT
ORDER DENYING HEARING

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
SAN FRANCISCO, CALIFORNIA 94102

MAR 20 1980

I have this day filed Order

HEARING DENIED

In re: 1 Civ. No. 47704

Lavelle

vs.

W.C.A.B. et al.

Respectfully,

G. E. BISHEL
Clerk

68993-877 11-78 4M OBP

APPENDIX IV

FINDINGS OF FACT

1. Applicant, Wayne C. LaVelle, born January 15, 1946, was employed as a ramp serviceman in the aircraft industry in Los Angeles, California, during the period August 4, 1972 to an including October 25, 1974, by Trans World Airlines, whose workers' compensation insurance carrier during the above period was Liberty Mutual Insurance Company, when he sustained injury arising out of and occurring in the course of his employment resulting in emotional and mental illness.

2. Applicant was also employed as a shop steward during the period June 1, 1971 to and including December 31, 1972, by Local Lodge 1111 of the International Association of Machinists and Aerospace Workers, which was uninsured for workers' compensation purposes during the above-mentioned period, and sustained injury as indicated in Finding of Fact 1 hereinabove.

3. Applicant was also employed as a shop steward during the period June 1, 1971 to December 31, 1972 by District 142 of the International Association of Machinists and Aerospace Workers', which

was uninsured for workers compensation purposes during the abovementioned period, and sustained injury as indicated in Finding of Fact 1 hereinabove.

4. Applicant's earnings were maximum for both temporary and permanent disability ($105.00 - $70.00).

5. This cause of action is not barred by the Statute of Limitations.

6. Medical treatment is required to cure or relieve from the effects of this injury. Liberty Mutual Insurance is designated to furnish and control medical treatment, subject to reimbursment by Local Lodge 1111 of the International Association of Machininsts and Aerospace Workers, to be adjusted by the parties.

7. This injury caused temporary disability beginning January 22, 1974 to and including February 28, 1974, for which endemnity is payable at the rate of $105.00 per week.

8. Employment Development Department paid unemployment compensation disability benefits and is allowed a lien for payments at the rate of

$105.00 per week, beginning January 30, 1974 to February 28, 1974, in the total sum of $450.00, for which period temporary disability was found herein.

9. This injury caused permanent disability after apportionment of 13-3/4 per cent, amounting the 45.25 weeks of disability payments at the rate of $70.00 a week in the total sum of $3,167.00, payable forthwith.

10. Liability of each defendant herein, Liberty Mutual Insurance Company, Local Lodge 1111 of the International Association of Machinists and Aerospace Workers, and Distict 142 of the International Association of Machinists and Aerospace Workers, is found to be joint and several.

11. Liberty Mutual is appointed managing carrier, subject to contribution to be worked out in separate proceedings.

12. Applicant is entitled to reimbursment for expenses of self-procured medical tratment required to cure or relieve from the effects of this injury in amounts to be adjusted by the parties, including but not limited to the sum of

$855.00 payable to Leonard Neff, M.D., and $1,375.00 payable to Valley Psychiatric Medical Clinic/Dr. Eisenberg, subject to reimbursment only for services provided to applicant during the period of injury herein.

13. The lien claim of Lien Services, Inc. for Connecticut General Life Insurance Company in the sum of $3,686.70 is for payments to doctors and hospitals for services to the applicant on dates prior to the period of injury herein and/or other parts of body injured and is hereby disallowed.

14. Applicant is entitled to reimbursement for medical-legal expenses in amounts to be adjusted by the parties including but not limited to $225.00 payable to Bruce Medical Group, $300.00 to valley Psychiatric Medical Clinic/ Dr. Eisenberg, and $150.00 to Law Offices of William C. Gordon in reimbursement for payment to Martin Blinder, M.D.

15. A penalty will not be imposed.

16. Applicant's former attorney, Hermet Mathews has been awarded a fee in Case 71 LA 371 256.

17. Applicant's former attorney, Law Offices of William C. Gordon, 66 Montgomery Street, Suite 600, San Francisco, Ca, 94104, has rendered services of the reasonable value of $350.00.

AWARD

AWARD IS MADE in favor of WAYNE C. LAVELLE against LIBERTY MUTUAL INSURANCE COMPANY, LOCAL LODGE LLLL OF THE INTERNATIONAL ASSOCIATION OF MACHININSTS AND AEROSPACE WORKERS, jointly and severally with LIBERTY MUTUAL INSURANCE COMPANY as managing carrier in accordance with Finding 11 hereinabove; of temporary disability indemnity in accordance with Finding 7 hereinabove; together with permanent disability indemnity in accordance with Finding 9 hereinabove; together with medical treatment in accordance with Finding 6 hereinabove; together with reimbursement for self procurred medical treatment expenses in accordance with Finding 12 hereinabove; together with medical-legal costs in accordance with Finding 14 hereinabove; less $450.00 payable to Employment Development Department in satisfaction of its lien claim; less $350.00 to Law

offices of William C. Gordon, as attorney fee herein allowed.

IT IS FURTHER ORDERED that the lien claim of Lien Services Inc. for Conneticut General Life Insurance Company be and the same is hereby disallowed.

IT IS FURTHER ORDERED that STATE COMPENSATION INSURANCE FUND be and it is hereby dismissed as party defendant herein.

_____
JESSE E. FLUHARTY
WORKERS COMPENSATION
JUDGE

EXECUTED: February 25, 1980
Served on said date by mail on persons on official address record
by:_____

WAYNE C. LAVELLE
Case No. 74 LA 392 377

79-1992

Supreme Court, U. S.
FILED
JUL 29 1980
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1979

****

No. 79-1992

****

WAYNE C. LA VELLE, Petitioner

v

WORKERS' COMPENSATION APPEALS BOARD,
State of California Trans World Airlines
LIBERTY MUTUAL INSURANCE CO.
INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS LOCAL 1111
DISTRICT 142 OF THE INT'L
ASSOCIATION OF MACHINIST
HARTFORD ACCIDENT & INDEMNITY CO
Respondents

****

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

****

PETITIONER'S REPLY MEMORANDUM

WAYNE C. LA VELLE
45 Reed Bl. #2
Mill Valley CA
415 383-6079

July 26, 1980

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1979

****

No. 79-1992

****

WAYNE C. LA VELLE, Petitioner

v

WORKERS' COMPENSATION APPEALS BOARD,
State of California

LIBERTY MUTUAL INSURANCE CO.

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS LOCAL 1111

DISTRICT 142 OF THE INT'L
ASSOCIATION OF MACHINIST

HARTFORD ACCIDENT & INDEMNITY CO

Respondents

****

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

****

PETITIONER'S REPLY MEMORANDUM

Respondent, in its oppossing brief #79-1992, submits that the United States Supreme Court has no jurisdiction over the federal questions raised by the Petitioner because of non-compliance with rule 23 (1) (f).

Petitioner has complied with Rule 23 (1) (f) on page six (6) of his Petition for Writ of Certorari, but a typeographical omission did take place. After Section 13, Article 1, insert, "...of the Constitution of California and in violation...". The Petitioner seeks review because of the due process questions involved. After Petition for Writ of Certorari was docketed, the State of Californis Court of Appeal published the contents of the Denial of Writ of Review. This review, as copied, appears in the appendix hereto. The last sentence evidences the Petitioner's claim in compliing to Rule 23 (1) (f).

> LaVelle also contended that he was denied due process because the Judge refused to review all the reports of Drs. Novom and Hector and the reports related to his prvious left extremity injuries. Apparently no response was filed.

QUESTIONS PRESENTED

QUESTION I

The Petitioner's intention in presenting question I is to emphasize the disabled condition he was in both physically and mentally at the time of the trial. The Petitioner was in constant pain from his physical injuries to his right knee, left hand, left arm, back, lungs, and chest area. He took medication for these pains. In addition, the applicant suffered and took medication for his mental illness. Question one stands alone as presented.

QUESTION II

As presented in the Petitioner's Writ for Certorari, the Respondent's brief attempts to pull the Supreme Court Justices thoughts away from the incompetency issue and the petitioner's ability to receive a fair trial without an attorney.

Because of his indigent status, the Petitioner begged the Judge to help him by having the insurance companies continue disability payment. Petitioner made a special plea because it was Christmas. Still no money came in until the petitioner won a Social Security Admin-

istrative decision on January 9, 1978.

During this time when Petitioner was indigent, the Los Angeles Welfare Dept. refused the Petitioner any benefits. The Petitioner had no money, so he was forced to rent his house to keep from forclosure. The applicant was therefore rejected from receiving welfare assistance because he did in fact own a home. The house finally had to be sold (at a considerable loss) to pay off creditors, taxes, and family members who gave support to the applicant over the years of the trial. The Judge's summary of evidence has always failed to report the request for legal assistance and the request for money payments.

QUESTION III

To the Respondent's claim that that petitioner never claimed incompetency at any stage of the trial, and that the record is devoid of any medical reports asserting that the Petitioner was incompetent, or either unable to manage his own affairs, or unable to prosecute his own litigation is not true. On the contrary. the Petitioner did file with the Appeals Board medical files and the

Social Security Decision on January 9, 1978, stating that the applicant could not take care of his daily life and responsibilities.

The Petitioner still claims that he is incompetent. It is noted by the Respondents that his legal writs have demonstrated some clear intellectual functioning. However, it is a medical fact that intellectual abilities do not insure mental stability or cure mental illness. Also, mental illness does not mean that a person is completely disabled all the time in every circumstance. In this case, the Petitioner has used intellectual persistance to express and demonstrate his own obsessive-neurotic personality.

PERSONAL LIBERTY
AND PROPERTY

The petitioner rebuts the Respondents statement on page 3a that personal liberty and property is not taken away in Workers' Compensation proceedings. The Petitioner contends that when the applicant is denied medical treatment and disability compensation because of an unfair trial and no legal assis-

tance, personal liberty and property have indeed been taken away.

The Respondent states that economic status is not determinative to the fact of attorney representation. What the respondent attorney has stated in Labor Code Section 4903 (a) is true. What is not true is his summation that the rich and poor have available free attorney service until a fee is awarded.

Many attorneys because of Labor Code Section 4903 (a) refuse claimants because the case won't bring a large sum of money or because of the long time it takes for the attorney to collect his money, which makes taking the case useless.

A special intention in this case was the fact that the applicant was mentally ill. Many of the attorneys did not want to confront the obstacles concerning the Petitioner's case because of his mental illness. Also, in the present case, the applicant had twelve compensation cases to be heard before the Appeals Board. The law does <u>not</u> regulate to attorneys who or what cases they must represent. The law fails to protect the injured worker from being scrutinized by

the California Applicants' Association. As it stands now, the injured worked who fails to secure representation must either represent himself or sign a compromise and release form.

A criminal being brought up on charges can obtain an attorney, if unable to afford one through the Public Defenders Office. The injured worker is entitled to as much protection from injustice. (A public compensation Agency could be set up offering services and refusing no one. The agency would be self-supporting and would need no tax revenue.)

The Petitioner was requested to pay $200.00 to Ermet Mathews, attorney, from a disability check before the trial had been heard. The trial in the present case lasted over <u>eight years</u>. (The record will reflect the complexness of these cases.) It is easy to see why an attorney, after working on a case for many years,may want monies from the client.

To the issue of inexperience, the Respondent would have the court believe that the petitioner did the work in obtaining favorable awards from the Appeals

Board. This is not true. The attorneys involved throughout the proceedings did a largs amount of work before being dismissed. For instance, the medical files on the five knee cases were completed and introduced into the record. The Applicant had underwent three knee surgeries. Thefacts were apparent to all sides. This work was performed by Ermet Mathews.

Much of the psychological ground work was done by William Gordon. Mr. Gordon was;obtained after Mr. Mathews voiced that the petitioner was "crazy". Then, because of the mental illness a conflict developed between Mr. Gordon and the Petitioner. The applicant became neurotic and took the files from Mr. Gordon. The applicant was sick and could not conceive or experience patience. The third attorney was Joseph Miller. He did all of the work on the ling case. Yet, again, the mental condition affected the attorney-client relationship because he requested to be released from his involvment.

The Petitioner coulc not function

as a normal person to take care of daily need, and could function only in a sheltered envirnment. The Petitioner's mental illness forced him into a situation where he could not effectively role play.

Transparent revision of the Respondent's statements regarding assistance of counsel reflects the thought that no applicant needs an attorney. If the Workers' Compensation Act is drawn in such a way that it is not a technical and elaborate procedure, then why did the Respondent employer have two Professional Legal Corporations representing them, and why did the International Association of Machinists and Aerospace Workers Local 1111 along with District 142 have two Professional Legal Corporations representing them?

In fact, the Workers' Compensation Game has become to technical and elaborate that non-medical companies solicit cases of injured workers for carefully selected doctors, who then are expected to produce the kind of medical reports desired by insurance companies, private businessmen or in some cases, worker's attorneys. This information is taken

from petitioner's appendix hereto.(1) (L.A. Times article on Workers' Compensation.)

The above statement taken from the L.A. Times article spells out an elaborate procedure. There is presently a planned overhaul of the California Workers' Compensation system which would limit the role of lawyers. This has caused much debate from lawyers and doctors. Theinteresting point for the Petitioner is what one lawyer said about the proposals:

> "The proposal is an anti-lawyer measure that is going to leave injured workers totally at the mercy of the bureaucracy", warned San Jose attorney Robert Morgan last friday, just before the California Bar Assn's Board of Governors voted to oppose major portions of the bill.

This statement is from the L.A. Times, June 3, 1980, from Petitioner's appendix (2) hereto.

The petitioner in the present cases has been at the total mercy of the bureaucracy and failed to receive a fair trial.

The Respondent's attempts to ascertain what type of legal advice Joseph Miller would have given the applicant. Would it relate only to the one case, when all

twelve cases were tried at once. If something said in one case would effect the outcome of the precise case he represented, would this also create a co-counsel situation? The Respondent cannot way for instance that the mental illness did not affect their case and not Mr.Miller's case.

The Workers' Compensation Appeals Board Rules of Practice and Procedure reflect petitioner's claim that the cases are related;

Section 10590: Consolidated Cases. Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Whether a consolidation be ordered or a master file used to accommodate exhibits shall rest in the sould discretion of the Appeals Board members or referee presiding. Under such consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the consolidated proceedings under a master file, if so designated. When so adduced, such evidence shall be deemed part of the record of each of the seceral consolidated cases. Evidence received subsequent to the order

of consolidation shall be similarly received with like force and effect.

Section 10592. Service of Pleadings and Decisions, Consolidated Cases. Separate pleadings shall be filed and separate findings, orders, decisions and awards shall be made and filed in each case consolidated for hearing. Joint minutes of hearing, summaries of evidence and opinions may be utilized with sufficient copies for the required filing and service in each of the several cases.

Additionaly, Respondent attorney for TWA and Hartford Accident & Indemnity Co., Barry Evans, wrote in their Petition for Reconsideration Case No. 76 ING 38740 on page six (6) line five (5):

> ...since the psychiatric or functional element pervades <u>all</u> of the applications pending before the Board...

thus demonstrating a common link between each case. The Respondents and Petitioner agree that the above statement is true. Therefore the Respondent's suggestion that the United States Supreme Court would not have jurisdiction over the consolidated cases is not justified based on the foregoing statement.

The Petitioner sought to have the cases re-consolidated as they were in the Appeals Board and rules 10590 and 10592, in addition to the U.S. Supreme Court Rules 23 (5) and 15 (3). The basic questions of due process are the same in all of the cases.

Petitioner still calims that the well-known adage that "he that is his own lawyer has a fool for a client" has a psychiatric basis. (Petition for Writ of Certiorari, page 15.)

For the Respondent to claim that the Petitioner has made no attempt to show that there was not a fair trial is not reasonable in relation to the Denial of Writ of Review contained in appendix hereto.

Just as the situation before this court reveals that the Petitioner did not receive a fair trial, the Workers' Compensation Judge was negligent in his responsiblity to use due diligence concerning any possible incompetancy of the applicant. It is conceivable that Judge Fluharty didn't read the medical reports until the case was submitted for decision. In fact, it took the trial Judge <u>six</u>

years after the original application to decide that indeed the Petitioner was suffering from mental illness.

The Petitioner is in no way attempting to inflame the record on his claim of incompetency. In fact, if the complete record is secured by this court no doubt will be left in anyone's minds. The medical reports and decisions by the Social Security Administration will rebut the Respondent's theory that the applicant wasn't a mental incompetent. The Petitioner has an organic mental illness known as Manic-Depression, for which he has been under medication and psychotherapy for seven years. This disease is pathologic, causing a chemical imbalance inthe brain. Manic-Depressive Syndrome is characterized by severe, debilitating mood swings and episodes of psychotic behavior, with these symptoms being caused or aggravated by stress. A full rang of evidence can be reached at the Justices command, and will effectively demonstrate the lack of due process between the Petitioner and the Respondents. The Petitioner has never claimed any degree of "psychoneurosis"--this is the

wordage of the Respondent's attorney.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the Judgement and Opinion of the Court of Appeal of the State of California, First Appellate District, Division one.

Respectfully submitted,

Wayne C. LaVelle

WAYNE C. LA VELLE
45 Reed B. #2
Mill Valley CA 94941
PRO SE

Appendix I

MF Los Angeles Times Mon., May 12, 1980—Part I 3

Alleged Abuses in Workers' Compensation Cases Under Probe

Ghost-Written, Tailor-Made, Questionable

Medical Reports Cited

By HARRY BERNSTEIN
Times Labor Writer

State investigators have opened a major inquiry into allegations that some doctors are taking fees for signing their names to "ghost-written" medical reports in workers' compensation cases and that other doctors are writing or signing "tailor-made" medical reports upon request.

Another phase of the inquiry deals with non-medical companies that allegedly solicit cases of injured workers for carefully selected doctors who then are expected to produce the kind of medical reports desired by insurance companies, private businessmen or, in some cases, workers' attorneys.

The state officials are also investigating allegations of excessive or unnecessary medical and legal fees in some workers' compensation cases.

But the primary thrust of the investigation is into the questionable medical reports allegedly being used to eliminate or reduce benefits sought by workers in on-the-job accidents or used by workers themselves to get undeserved benefits.

There is general agreement among lawyers, doctors and workers' compensation experts that abuses do exist, and that doctors can be found to write a report to prove almost anything, including, as one lawyer jokingly said, "that it really isn't so bad to lose a leg."

But there is a strong argument over both the extent of such abuses and over the most effective method of correcting them.

Don Vial, state industrial relations director, said that, "our awareness of a growing number of abuses led to

the current investigation and is a key reason behind our attempts to bring about major legislative changes in the workers' compensation system."

With the support of the California Federation of Labor, major employers and many insurance companies, the Brown Administration has prepared legislation that would make the most sweeping changes in the state's $2.9 billion a year workers' compensation system since it was established 63 years ago.

Administration officials say the proposed changes would boost benefits paid to injured workers, but also would crack down on what they call "medical prostitutes"—doctors who write reports to meet the specifications of attorneys for either insurance companies, self-insured firms or injured workers.

But Vial, whose agency includes the workers compensation division, said the medical-legal adversary system now used to decide the amount of benefits to be paid "feeds these abuses, and we must come to grips with the problem before it destroys a program that is absolutely essential to workers."

Dr. William L. Clark, medical director of the state's Division of Industrial Accidents, said, "the abuses have become absolutely disgraceful."

Franklin O. Grady, administrative director of the industrial accident division, said that an increasing number of payments are dependent on the credibility of written medical reports.

in contrast to direct testimony given before a worker's compensation judge, where the doctor can be cross-examined by opposing attorneys.

"Serious doubt is cast on the reports when some non-medical entrepreneurs solicit business for doctors, then actually write or help write medical reports that are signed by the doctors and used for either the defense (the company trying to get out of paying a claim) or the worker," Grady said.

The Times has learned the names of four of the non-medical companies being investigated by the state for improperly assisting doctors in writing workers' compensation medical reports.

Robert G. Gonsalves, president or

chief officer of three of the companies —Inter-Val Management, M.L.I. Inc., and Medical Management Co.—insisted that his firms simply "review voluminous medical records that are six inches or a foot high sometimes and condense those records for a doctor into two or three pages."

Gonsalves said doctors often need assistance in understanding the non-medical aspects of workers' compensation, and do not have the time to review often lengthy medical histories, and these doctors are offered the service of his companies.

His business will not be limited to medical assistance, Gonsalves said, "because we also have contacts in China and hope to do some trading with that country."

Another firm being checked is Medical Associates Research Service, whose chief officer, Roger Skogman,

Please Turn to Page 19, Col. 1

is also a claims investigator for the city of Los Angeles.

Skogman said he sees no conflict of interest in the two jobs he holds, and insisted that when he does work through his company with physicians, "I point out to them the law as it exists so they can incorporate the points of law they need in writing their (medical) reports."

He denied that he writes any of the reports for doctors, or prepares such reports, and insisted that the major problem with worker's compensation is the abuse of it by workers who exaggerate their claims.

Efforts to see if report abuses exist statewide apparently began with a letter from Dr. Lawrence N. Borelli, an orthopedic surgeon in Westlake Village, who was concerned about an "approach" made to him by a non-medical firm that wanted to hire him, presumably to write slanted medical reports.

His letter, written October 10, 1979, found its way to the medical advisory committee for the industrial accident division.

It was the advisory committee, then, which decided a full investigation was needed to determine how many doctors and private non-medical firms write distorted medical reports.

Last December, the medical advisory committee, headed by Dr. Allen J. Enelow, unanimously adopted a resolution calling for a full investigation of "written-to-order" medical reports.

The confidential resolution said it was the opinion of the physicians on the advisory committee that "these practices may violate accepted canons of medical ethics, may constitute fraud and conspiracy to commit fraud, and, by misrepresenting the source of

evidence, may tend to interfere with just resolution of workers' compensation cases."

The actual investigation is being conducted by the state Board of Medical Quality Assurance, the agency that regulates medical practices in California.

Doctors leading the inquiry said there are at least three separate issues involved, but only one is clearly legal.

It would be illegal, they said, for a doctor to simply sign his or her name to a medical report written or prepared by someone else and used, for instance, by an insurance company trying to avoid payment of a disability claim to an injured worker.

It is wrong, said Dr. Clark of the state industrial accidents division, for a non-medical firm to "line up a panel

Officials say new laws are needed to minimize litigation in such cases.

of doctors it knows will write the kind of reports wanted by a company or an applicant for benefits, but whether such conduct is illegal is unclear."

But there are many doctors, he said, who are not "medical prostitutes, but because of their political views may naturally tend to be used by companies fighting claims or by workers seeking benefits.

"Some very conservative doctors simply feel most workers abuse the system and will write their medical reports minimizing the degree of a worker's injury because, consciously or subconsciously, the doctor doesn't want workers to have any benefits."

There are others, he said, who want a far more comprehensive medical care system than now exists in the United States, and so are willing to "slant" their medical report to help injured workers get more benefits than they are legally entitled to.

But all of those interviewed about the investigation agreed that although the number of doctors acting illegally may be relatively small, they constitute the most serious aspect of the problem because, as Clark put it, "these medical prostitutes will write and sell any kind of report the client wants."

State industrial relations director Vial is convinced that the bulk of the abuse comes from doctors who, for money or because of their political orientation, write reports to help insurance companies and self-insured businesses reduce their workers' benefit payments.

He said that in some ways the largest part of the problem does not involve dishonesty or false medical reports, but "excessive or unnecessary legal and medical fees, and by curbing such fees we can reduce substantially the cost of the program and increase benefits to workers."

In some cases, there is no hint of illegality, but state officials say the volume of business done by some doctors substantiates the contention that new laws are needed to minimize medical examinations and litigation in workers' compensation cases.

One Los Angeles physician, Dr. Martin Goldfarb, reportedly took in fees of close to $1 million in 1979, almost entirely from workers' compensation cases, and most of which were done for insurance companies, self-insured companies or governmental bodies such as a city or county.

Goldfarb's fees were checked many times by the Los Angeles Medical Assn.'s Peer Review Committee, which determined that some of his fees were excessive by 50% or more. As a result, Dr. Goldfarb agreed to reduce his fees.

Goldfarb refused to discuss the workers' compensation system, or his fees, and his attorneys warned The Times that any reference to the physician should be "accurate and honest."

The reference to his gross income and the medical association's review of his fees were confirmed by several sources, even though neither Goldfarb nor his attorneys, Ronald Ziff and Chuck Stovitz, would comment on them. There was no indication that Goldfarb is a target of a state investigation.

Enelow, chairman of the state Medical Advisory Committee, said he and his colleagues sought the investigation because it involves a "sometimes subtle problem that pervades the entire system, and it is very important that medical experts who evaluate workers' compensation cases are not seduced by the sources of their fees, even those doctors who are basically honest."

Appendix II

Los Angeles Times Tues., June 3, 1930—Part I-3

Plan to Overhaul Workers' Compensation Stirs Army Debate

Would Limit Role of Lawyers, Doctors in Claims Procedures

By HARRY BERNSTEIN
Times Staff Writer

Groups of angry doctors and lawyers have begun an intensive campaign to defeat or substantially modify proposals in the Legislature that would make the most sweeping changes ever in the state's workers' compensation system.

Hearings started a week ago in Sacramento on proposals to increase maximum temporary benefits to injured workers by 81% (up to a $280 weekly maximum), increase maximum death benefits to survivors by 264% (up to $200,000) and drastically change procedures for getting benefits.

The most controversial part of the proposal deals with the procedural changes, with each side insisting that it alone is truly interested in the welfare of the injured workers and in the efficiency of the $2.9 billion-a-year workers' compensation system.

Supporting the changes are the Brown Administration, the California AFL-CIO, the Association of California Insurance Companies and a number of major corporations.

The opponents, mainly doctors and lawyers, charge that the proposals would have a disastrous impact on injured workers by making it difficult if not impossible for them to get legal and medical help in obtaining benefits.

"The proposal is an anti-lawyer measure that is going to leave injured workers totally at the mercy of the bureaucracy," warned San Jose attorney Robert Morgan last Friday, just before the California Bar Assn.'s board of governors voted to oppose major portions of the bill.

The California Trial Lawyers Assn. has hired a public relations firm, Roger Beck, Inc., to fight the legislation in its present form.

And doctors who specialize in workers

compensation cases have formed the California Society of Industrial Medicine and Surgery to fight the proposed changes.

Sponsors of the changes counter that they would indeed limit the number of doctors and lawyers involved in getting workers their benefits and say they hope to curb if not eliminate abuses by lawyers who cause excessive litigation and doctors who make large sums of money by writing "tailor-made" medical reports to fit the specifications of those who buy their services.

Until now, the arguments over the proposed changes have taken place mostly in private or in legislative committees, but the opponents of the legislation have decided to go public with their objections.

The result is an intensified debate that proponents say may delay but will not stop the changes they seek in handling workers' compensation cases. Opponents' major modifications in the proposals must be made if any bill is to be passed by the Legislature.

There is general agreement that benefit levels for injured workers must be raised because of inflation and the only real argument on that issue is whether some of the increases should go to workers who get benefits for a permanent, partial disability. So far no increase is planned for a worker in this category, which has a limit of $70 a week.

Far more emotional arguments are raised over procedural changes, especially the one that would allow the state's Disability Evaluation Bureau to make an initial estimate of the extent of a worker's permanent injury based on the report of the doctor who is primarily responsible for the treatment of the workers.

At present, an injured worker can immedi-

ately hire a lawyer and get a doctor to determine the extent of his injuries. The worker's boss, or an insurance company, does the same thing, and the amount of benefits is sometimes decided only after a legal battle between the opposing sides.

Often the two sides agree on the amount, but when they disagree, the issue goes to trial before a workers' compensation judge who bases his decision on often conflicting medical reports.

Under proposed law, the state would make its benefit award based on the report of the physician who treats the worker, and only after that could the worker challenge the amount of the award.

Basic medical treatment costs would continue to be covered under the proposed legislation, but additional fees of lawyers and doctors would come out of a worker's benefits only if they took part in an appeal of the state's initial award and that award was increased.

The attorney's fee would be based on the amount of the increase, not on a percentage of the total award to the worker, as is the case now.

The fee of the doctor involved in the appeal would be paid in full, but only if the benefit was raised by the appeal.

The result, proponents of the legislation say, would be to sharply curb the intrusion of lawyers and doctors in workers' compensation cases and save millions of dollars in fees for what are called "unnecessary" legal consultations and medical examinations.

Opponents of the legislation insist doctors will not even examine an injured worker if they are going to be paid only if the state increases the initial compensation award and that lawyers will be reluctant to take cases for the same reason.

Carlyle R. Brakensiek, legal counsel for the Assembly Committee on Finance, Insurance and Commerce, which is hearing the debate, said, "The proposed system would put on one side the employer, the insurance companies and their teams of lawyers and sophisticated claims adjusters. On the other side you would have a lone worker who would be denied effective access to legal and medical advice until after the critical initial stages of his benefit claims are completed."

But Don Vial, the state's industrial relations director who is one of the key architects of the proposed legislation, called the opponents' fears "nonsense" and added:

"Their real fear is that there will be more money going to injured workers and less to the doctors who are hired to write the medical reports or the lawyers who make money out of the litigation."

The goal, Vial said, is "to put our confidence in the doctor who treats the injured workers and in a system that protects workers through administrative procedures, and not primarily through litigation."

Vial also noted that a worker would be entitled to get a doctor of his choice and would not be required to use only

a "company doctor" who might be biased in favor of the company's budget problems.

But another attorney, Barry Satzman, said that while it is true workers are entitled to a free choice of doctors, under the proposals "that choice is made only 30 days after the injury, or if the worker has notified the employer before the injury of the name of his or her doctor."

Satzman said few workers make such advance notices, and when they do, they usually select their family physician, who is not likely to be skilled in industrial accident work.

The result, he said, is that injured workers usually go to company-selected doctors who are "oriented" to the needs of the company instead of the worker.

Brakensiek said he has heard of the alleged widespread abuses by "prostitute doctors" who will write any kind of medical report a company will pay for, and of attorneys who drag out workers' compensation cases only to increase their fees.

But he contended that "the perceived abuses are worse than the reality, and are mostly exaggerations."

Vial responded, "Those who argue against the reforms and want to keep the present, excessive legal and medical costs actually belittle the intelligence of workers.

"They are saying workers are not able to participate in a system that will be set up to protect their rights unless they are led around by the nose by lawyers and the doctors who will write reports to order."

Arne Werchick, president of the 5,000-member California Trial Lawyers Assn., said that there are "many bad aspects of the bill, but the most serious of them is its intent to remove lawyers from the system."

It is easy to see why the insurance industry, a co-sponsor of the proposals, would want that, he said, because "it is much easier to keep from paying injured claimants all they are entitled to if the worker cannot have a lawyer representing him and protecting his rights."

But he expressed surprise that other sponsors, including the State AFL-CIO and the Brown Administration, would join in seeking the changes.

John Henning, executive secretary of the state AFL-CIO, said he thought there were substantial abuses in the present system and that changes are needed. But he said he is optimistic the abuses can be corrected without depriving workers of full legal protections.

Marvin Shapiro, head of the California Applicants Attorneys Assn., argued that the bill "does nothing whatsoever for those earning less than $12,000 a year." (Under the proposed legislation, workers who make less than $12,000 a year would get no increase in their maximum benefits because they already get two-thirds of their wages when injured, which is what the legislation seeks for all workers.) Shapiro also charged that only insurance companies would benefit from the proposed changes.

While most lawyers seem to have joined in opposition to the proposals, doctors are sharply divided, and many physicians are calling for the changes as a means of eliminating what they charge are the "bad apples" in their profession.

With the Legislature itself divided both on the usual political lines, and split by the intra-party battle between Assembly Speaker Leo McCarthy and former majority leader Howard Berman, the final outcome of the "reform" attempt is uncertain.

But all sides seem to agree that there will be major changes in the workers' compensation system this year.

Appendix III

WORKERS COMPENSATION BILL

The California legislature is entertaining Senate Bill No. 375 which would prevent workers from retaining a lawyer to handle a workers compensation case. In addition, it would stop medical payments while disputing a disability rating.

This Bill allows the insurance carrier to virtually control the workers compensation process. The effects of this Bill, if passed, would be a giant step backwards for the workers.

We urge you to write your State Legislators and urge that they DO NOT support the passage of Senate Bill No. 375. ★

Appendix IV

DENIAL OF WRITS OF REVIEW

WAYNE C. LA VELLE, Petitioner v.
WORKERS' COMPENSATION APPEALS BOARD OF THE STATE OF CALIFORNIA; TRANS WORLD AIRLINES; LIBERTY MUTUAL INSURANCE COMPANY, Respondents

W.C.A.B. No. 74 LA 391 394--
W.C.A.B. Judge Jesse Fluharty

Civil No. 47704--Court of Appeal
Second Appellate District, Division 1

For Petitioner--Wayne C. LaVelle
in propria persona

DISABILITY--PERMANENT--AN AIRLINE BAGGAGE HANDLER WHO SUSTAINED A SOFT TISSUE INDUSTRIAL INJURY TO THE FOURTH AND FIFTH FINGERS OF HIS LEFT HAND WAS NOT ENTITLED TO PERMANENT DISABILITY BENEFITS WHERE ALL OF THE REPORTING PHYSICIANS FOUND THE INDUSTRIAL INJURY PRODUCED NO PERMANENT DISABILITY. (See generally Hanna, California Law of Employee Injuries and Workmens' Compensation, Vol 2, §14.01(2) (a).)

DIGEST OF CASE DENIED JUDICIAL REVIEW

On May 4, 1974, Wayne C. LaVelle sustained an injury to the little and ring fingers of his left minor hand

while employed as a ramp serviceman by Trans World Airlines. At a hearing on LaVelle's application for workers' compensation benefits he testified that his fingers were injured when a baggage cart door closed on them. Apparently, the evidence also showed that LaVelle had sustained an injury to his left elbow in January 1967 as well as injuries to his left hand in March and June 1967.

The "Doctors First Report of Work Injury" regarding the May 1974 injury stated that LaVelle's fourth and fifth fingers were swollen and painful. The report also indicated that LaVelle would be disabled from work for three to four weeks. X-rays showed no broken bones. Dr. J. W. Fitzgerald reported on May 9, 1974 that LaVelle had a contusion of the left hand and referred him to Dr. S.J. Thorrens for treatment. On May 8, 1974, Dr. Thorrens reported that LaVelle's fingers swollen and painful and that permanent disability could not yet be determined. Dr. C. Ashworth reported on June 19, 1974, that his examination of LaVelle produced some unusual findings in that compression of the fourth

and fifth metacarpal heads produced complaints of left shoulder pain and that palpation of the region of the radial nerve near the left elbow brought complaints of pain in the left hand in the area of the ulnar nerve. On July 8, 1974, Dr. Ashworth reported that LaVelle had no objective findings on re-examination. The doctor also stated that he had been unable to find a cause for LaVelle's continued complaints of left hand pain.

LaVelle then went to Dr. Steven Novom, a neurologist, because his left hand pain continued. On August 12, 1977, Dr. Novom reported that test showed a possible blockage of the ulnar nerve at or above the left elbow which is a "common site for mild trauma to the ulnar nerve". Dr. Bruce Hector reported on November 30, 1977, that LaVelle complained of pain and cremping in the left hand with occasional radiation to the left shoulder. The doctor also stated that LaVelle's symptoms were consistent with the nerve tests results which indicated there was a partial ulner nerve blockage.

On May 25, 1979, the Workers' Compen-

sation Judge issued a Findings and Award finding that LaVelle's left hand injury did not result in any permanent disability. In his Opinion of Decision the judge stated that none of the reporting doctors indicated that LaVelle had any permanent disability as a result of the May 1974 injury. La Velle filed a petition for reconsideration which was denied by the Appeals Board on July 17, 1979.

In seeking a writ of review LaVelle contended that the medical evidence showed he had sustained a cumulative industrial trauma to the nerves of the left extremity which resulted in permanent disability. LaVelle also contended that he was denied due process because the judge refused to review all the reports of Drs. Novom and Hector and the reports related to his previous left extremity injuries. Apparently no response was filed.

WRIT DENIED February 22, 1980.